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PUZZLING PASSAGES IN THE DAMASCUS FRAGMENTS

*Wer den Dichter will verstehen
Muss in Dichters Lande gehen*

Many passages of the Damascus Fragments have so far successfully resisted all efforts at correct translation and interpretation. This is due partly to the awkward Hebrew in which they were composed and to the bad state of preservation of the text, but partly also to the circumstance that the translators and interpreters have had no clear perception of what the text is about. It is not surprising that their efforts should have been unavailing. My purpose here is to consider two such passages and to submit a translation and explanation of the texts which fit both their language and purport.

1. Page II (MS. A) [11] ובכולם [= שני עולם] הקים לו קריאי שם
למען התיר פליטה לארץ ולמלא [12] פני תבל מזרעם ויודיעם ביד משיחו
רוח קדשו והוא [13] אמת ובפרוש שמו שמותיהם ואת אשר שנה התעה.

Before offering a translation of, and a commentary on, this passage, it is necessary to observe that the passage forms the conclusion of a short homily (page II, lines 2-10) on the theme that God's patience and forgiveness are reserved for those who repent of their sins, and total destruction for those who rebel against "the way"¹ and those who despise the law. The misdeeds of the wicked, the periods of history given over to their dominion, and their ultimate doom have been predetermined in God's foreknowledge from all eternity, and He has despised the generations of the human race that originated in Adam.² This gloomy picture of the history of the human race, abandoned to evil through the lapse of Adam, is relieved in the homily's concluding passage, of which the following is the translation (accompanied by notes):

But in each of them [*i.e.*, the periods of history] God has raised individuals called by the Name in order to secure a remnant for the salvation of the earth and to people the surface of the world with their progeny, and He has imparted to them knowledge through His Christ, His Holy Spirit who is the Truth

¹ סרר דך. All translators of this phrase, as far as I can ascertain, tacitly change the verb into סרר מן. The effect of this unusual method of interpreting a text is to obliterate the pregnant Christian meaning of the phrase.

² מאדם, דורות מדם.

—their name [“Christians”] is derived from the name by which he is called [“Christ”]—and has led into error those whom He has hated.

הקים לו—the preposition with the pronominal suffix serves merely to give emphasis to the verb. It would seem pedantic to translate it.

קריאי השם—cpr. page IV, line 4: קריאי השם. The absence or presence of the article makes no difference as long as the author and reader have in mind a definite and unequivocal meaning attached to “the Name.”

להשאיר לנו פליטה—cpr. Ezra ix, 8, פליטה. The author of the Fragments substitutes here another expression for that found in MT.

ולמלא פני תבל מורעה—cpr. Is. xxvii, 6, ולמלא פני תבל מורעה. Another instance of substitution of a word in MT. The lxx render *tenubhah* as *karpou autou*. The pronoun in *mizzar'am* in the Fragments does not necessarily imply that the author had at his disposal a text of Isaiah containing a variant; he may have supplied the pronoun for reasons of style, or because he was acquainted with lxx.

וידועם—this is in contrast to התעה, and must be translated “has imparted knowledge.”

ביד משיחו רוח קדשו והוא אמת—the reason for translating *meshiho* “His Christ” will be stated below. The formula “His Holy Spirit who is the Truth” recalls John xiv, 16-17, 26. The whole phrase “His Christ, His Holy Spirit who is the Truth” appears to contain the germ of the doctrine of the Trinity. “Truth” is already identified in the Bible with God, as for example, Jer. ix, 10 והי אלהים אמת.

והוא—Dr. Rabin, in his edition of the Fragments (under the title: *The Zadokite Documents*, Oxford, 1954, p. 9), prints this word as והוא, or והות (in the notes to the text). This misleads the reader to assume that the MS. exhibits one or other of these two words. In fact, there is a hole in the MS. in the place of the last letter and the remaining traces of the script can be read only as א, not ה or ת. The MS. is also torn where the letter stands which is read by Rabin as ה; and it is most likely ה. All other editors of the Fragments have read והוא, and there is no reason to depart from this reading.

לפרש את השם שמו ובפרוש שמו שמותיהם—the verb *לפרש את השם* means in Hebrew “to pronounce the name,” or “call by the name” and the noun, accordingly, “the name by which one is called.” The name of those who are under the guidance of Christ and the Holy Spirit is derived from “his name,” that is, from “Christ” they are called “Christians.”

The idea expressed in the concluding passage of the homily is simple and perspicuous. In all periods of history dominated by the wicked, whom God has hated and who have been led into error, there have been individuals, elected by God, who have received knowledge from Christ, who is identical with the Holy Spirit and the Truth (or God). These individuals have been and are called "Christians," their name deriving from "Christ."¹

This idea would appear paradoxical in that it implies that there were Christians even before the advent of Jesus Christ. It is nevertheless an important constituent of the conception of history prevailing in the early Church, and the paradox ceases to be such when it is recognised that the conception was founded in a belief in the pre-existence of Christ. A clear expression of this idea and of the belief underlying it is found, for example, in Justin:

"But that some may not in reply to our teachings unreasonably say that according to us Christ was born 150 years ago in the time of Cyrenius, and taught what we assert Him to have taught at a later time under Pontius Pilate, and so object that all men who lived before Him were irresponsible, let us solve the difficulty in advance. We were taught that Christ is the firstborn of God, and we have already signified that He is the reason (*logos*), in which every race of men did share. Thus those who lived with reason are Christians even if they were counted godless, as of the Greeks, Socrates, Heraclitus, and others like them, and of the barbarians Abraham, Hananiah, Azariah, Mishael, Elijah, and many others, whose names and acts we decline to set down here, knowing that they would be long to tell."²

The view of the early Church that "Christians" existed before the advent of Jesus Christ, the various nuances in which it was proclaimed, and the use made of it by early Christian authors in their polemics against Jews are reproduced and fully discussed by M. Simon in his book, *Verus Israel*,³ to which the reader may refer for more ample information. It will suffice here to mention a passage from Theophilus of Antioch, quoted by Simon,⁴ for the light it throws on the text of the Fragments with which we are dealing. Theophilus voices his contempt for the puffed-up "science" of the Egyptians and Chaldeans, who in fact are ignorant of such

¹ In my paper, *The Christian Interpretation of the Sign X in the Isaiah Scroll*, to be published in the April number of *Vetus Testamentum*, I have indicated how the sect of the Damascus Fragments derived from Ez. ix, 4, their distinctive sign X, that stands for *Christos*.

² *Apol.* i, 46. E.T. by H. M. GWATKIN in *Selections from Early Writers*, etc., London, 1937, p. 56.

³ *Bibliothèque des Ecoles Françaises d'Athènes et de Rome*, clxvi, Paris, 1948, chapter iii, p. 87ff.

⁴ *Op. cit.*, 104, n. 6.

things as the creation of the world, of men, and of the vicissitudes of the human race as described in the Bible, and then concludes:

"From this it is patent that all the others have lived in error (*peplanesthai*), but the Christians alone have apprehended the truth, since we are taught (*didaskometha*) by the Holy Spirit that has spoken through the holy prophets and foretold all things."¹

The prophets of the biblical past and Theophilus' contemporary Christians are both included in this text under the name of "Christians," exactly as in the passage of the Fragments. The contrast in the Fragments between those who received instruction through the Holy Spirit and those who, deprived of it, have lived in error (וְיִירָעֻם בְּיַד מְשִׁיחוֹ רוּחַ קִדְשׁוֹ . . . הַתַּעֲהָ) is also paralleled in Theophilus (*peplanesthai* . . . *didaskometha*). The notion that the Holy Spirit is the fountain of knowledge is based on John xiv, 26: "But the Paraclete, the Holy Ghost, whom the Father will send in my name, he shall teach you all things . . ."

It is instructive to compare the translation of the passage of the Fragments offered here (which yields an excellent sense without any alteration of the Hebrew text) with the renderings by other authors. For this purpose I shall reproduce the three extant English translations and one foreign:

SCHECHTER: "And in all of them [*i.e.*, the periods of history] He raised for Himself men called by name, in order to leave a remnant to the earth and to fill the face of the world with their children. And through His Anointed He made them know His Holy Spirit, and he is true, and the explanation of their names; and them He hated He made go astray."²

CHARLES: "Yet in all of them He raised Him up men called by name,
In order to leave a remnant to the earth,
And to fill the face of the earth with their seed,
And through His Messiah He shall make them
know His Holy Spirit,
And He is true, and in the true interpretation of
His name are their names;
But them He hated He made to go astray."³

RABIN: "And in all of them He raised for Himself *men* called by name in order to leave a remnant for the land and to fill the face of the universe of their seed, and to make (or: and he made) known to them by the hand of His anointed ones His holy spirit

¹ *Ad Autol.* ii, 33; *PG*, vi, 1105.

² *Fragments of a Zadokite Work*, Cambridge, 1910, p. xxxiii.

³ *Apocrypha and Pseudepigrapha*, Vol. II, Oxford, 1913, p. 804.

and shew *them* (or: demonstration of) truth. And with exactitude He set out their names; but those whom He hated He caused to stray."¹

VERMES: " Dans chacun d'eux, Il suscita pour Lui des (hommes) appelés de leur nom afin de sauvegarder (un groupe) de rescapés pour le pays et de peupler la face de la terre de leur progéniture. Il leur fit connaître par Son Oint son esprit saint. Il est vérité et par son nom sont déterminés leurs noms. Par contre, ceux qu'Il a haïs, Il les a égarés."²

It is not too harsh to say that these translations are incomprehensible; but only Schechter acknowledged that he did not understand what the text is about.³

2. Page XII (MS. A); וכל העצים והאבנים [16] והעפר אשר [15] נואלו בטמאת האדם לנאולי שמן [ב]הם [17] כפי שמאתם ישמא ה[נ]ו[נ]ע בם וכל כלי מסמר או יתר בכותל [18] אשר היו עם המת בבית ושמאו בטמאת אחד כלי מעשה.

The text of this passage has harassed Hebrew scholars to a very great extent. First, they misread the word *shemen* in line 16,⁴ then they take the last five words in line 18 to be a single connected sentence which is impossible in Hebrew, and, finally, they emend single words of the text that require no emendation. The result of all these operations on the text is a translation which makes no sense, as the curious reader can confirm for himself.

The failure of the scholars to understand this passage is the effect of their misconception that the text deals with Jewish laws concerning ritual "purity." They admit that the contents of this passage cannot be squared with these laws, but nevertheless adhere to their preconceived idea. It is a characteristic of Hebrew scholarship, as manifested particularly in the study of the Dead Sea Scrolls, strenuously to uphold an idea notwithstanding all the evidence contradicting it.

What, then, is the subject of the passage in the Fragments? It appears that only one scholar, A. M. Habermann, has turned his eyes in the right direction, in suggesting, although only tentatively, that "perhaps the passage refers to heathen worship."⁵ This is in fact so, as a detailed analysis of the expressions used in the passage will show.

1 *The Zadokite Documents*, Oxford, 1954, p. 9.

2 *Les Manuscrits du Désert de Juda*, Tournai (Belg.), 1953, p. 161.

3 *Op. cit.*, p. xxxiii, n. 23: "Meaning not quite clear to me."

4 They print the word as שכי, SCHECHTER, *op. cit.*, p. li, n. 25, remarks that "the ו, . . may also be taken as a final ן." It is a final nun.

5 *Edah ve-Eduth*, Jerusalem, 1952, p. 117, n. 22: ואפשר כי הכוונה כאן היא לעבודה זרה.

LINE 15: וְכָל הָעֵצִים וְהָאֲבָנִים וְהָעֶפֶר, "all wood, stones, and clods of earth"—this reproduces the phrase from I K., xviii, 38, where the altar erected by Elijah in the open field is referred to. The expression 'afar in the biblical passage does not mean "dust"—scarcely the material for constructing an altar—but "clods of earth," as evidenced by Hab. i, 10. The phrase in the Fragment is thus a paraphrastic description of an "altar" or "place of sacrifices" in the open field, and refers, it is perhaps superfluous to point out, to a heathen cult.

Christian sources throw an interesting light on the background of the passage in the Fragments and provide us with information about the nature of the heathen cult envisaged by its author. The phrase "wood, stones, and clods of earth" is used by Zeno of Verona to describe the rustic sacrifices of the peasants in a passage in which he reprimands the Christian landowners for tolerating on their farms the heathen practices of their *coloni*:

"Hic quærite, Christiani, sacrificium vestrum, an esse possit acceptum, qui vicinarum possessionum omnes glebular, lapillos, et surculos nostis, in prædiis autem vestris fumantia undique solam fana non nostis; quæ (si vera dicenda sunt) dissimulando subtiliter custoditis. Probatio longe non est. Jus templorum ne quis vobis eripiat, quotidie litigatis."¹

"Now ask yourselves oh Christians! whether your own [spiritual] sacrifice can be accepted [by God]; you who know so well of each tiny clod of earth, each small stone, and each twig in the possessions of your neighbours, but only the shrines emitting smoke everywhere on your own fields escape your notice! These (if the truth must be told) you protect with fine subterfuges. Evidence of this is not far to seek. You litigate every day lest somebody snatches from you the temple rights!"

I owe this quotation to A. Dölger's illuminating paper, *Christliche Grundbesitzer und heidnische Landarbeiter*,² and I cannot do better than reproduce his comment on it: "By mentioning clods of earth, stone and twigs, the author has in mind the remains of a rustic sacrifice offered on a neighbour's meadow or tilled ground. The scorched clod of earth, the stone blackened with smoke, and the twig left half burnt are evidence to a neighbour that a heathen sacrifice has been offered on the spot. But he himself allows an altar to remain on his own ground, skilfully constructed of stone or wood, and a heathen field shrine of masonry, and studiously averts his eyes from the sacrifices offered there by his heathen peasants."³

In yet another text quoted by Dölger, a sermon by Maximus

¹ *Liber I, tractatus* 15, 6.

² *Antike und Christentum*, vi (1940-50), p. 297ff.

³ *Op. cit.*, p. 305.

of Turin, the same biblical phrase is employed with fine rhetorical effect to describe the rustic sacrifices: "When you go to the shrine (*cella*) you will find there withered clods of turf (*pallentes caespites*) and cinders, a sacrifice worthy of the demon—supplication to a dead god is properly made with inanimate objects! And when you walk out into the field, you will find altars of wood and images of stone, a suitable cult, in which lifeless gods are served on putrid altars."¹

These quotations from Christian authors prompt the suggestion that the author of the Fragments had in mind a rustic heathen place of sacrifice. Only on this assumption can the rest of his passage be satisfactorily explained. The heathen farmer used to make on the field altar an offering to his god of the produce of his farm, his vineyard, and oil press. The custom gave rise to a question of conscience among the Christians; Augustine dealt with the problem in his letter to Publicola. The latter had inquired whether a Christian wandering in uninhabited places and suffering from hunger was allowed to help himself from the food deposited in heathen *cella*. Augustine would permit this only if there were a doubt whether the food was a heathen offering; otherwise the Christian should exercise his Christian strength and abstain.² In the light of this, the rest of the passage of the Fragments can be explained:

Line 16: בַּשְׁמַת הָאֲדָם—*tum'oth* (pl.) refers to heathen sacrifices or offerings. Maximus of Turin speaks in the same vein: "*idolorum . . . pollutionem*," "*immolante enim rustico inquinatur domnedius*."³ הָאֲדָם in this context can mean only "pagan." At first sight this may appear strange; but let us consider for a moment the origin of the term "paganus" in the meaning of "idolator." The usual explanation of the term is that the *pagani*, the rural population, being refractory by nature to new ideas, persevered in their idolatrous beliefs with great tenacity before they accepted Christianity. *Paganus* thus became identical with "idolator." The term, however, was used by Tertullian⁴ at a time when the expansion of Christianity had hardly reached such proportion as to justify the assumption that idolatry was confined to peasants only. Indeed, according to Tertullian himself, idolatry was predominant in his period: *daemonia magistratus sunt saeculi hujus*.⁵ It seems unlikely, therefore, that the religious connotation of the term *paganus* owes its origin to sociological differentiation among the converts to the new faith. The connotation may have been born from the following train of thought: In the belief of the early Church, idolatry was

¹ *Antike und Christentum*, vi (1940-50), p. 308.

² *Epist.* 47, 3 (DÖLGER, p. 320).

³ *Sermo*, ci, PL. 57, 733.

⁴ *De Coron.* Mil. xi. PL, II, 93.

⁵ *De Idol.* 18 (I, 52, 2).

identical with the cult of demons, who were the progeny of the Devil. Adam, after his fall, became the property of the Devil¹ and a believer in demons. His condition after the fall is described in Gen. iii, 23, as a tiller of the soil, which is equivalent to *paganus*. The latter term thus signifies the condition of the unredeemed Adam, the idolator. The word *ha'adam* in the passage of the Fragments has, then, the same meaning.

נשמאים לכל . . . נוֹאֵלִי —cpr. for the syntax, Ez. xx, 31. לְנִאֲוִיךָם . . . נוֹאֵלִי —*shemen* is oil, and refers to the offerings of victuals deposited by the pagans on the altar in the field or the *cella*. לְנִאֲוִי (plene spelling of *go'oley* in Ne. xiii, 20) means, as required by the context and evidenced by Mal. i, 7, 12, "pollution" in regard to the offering of victuals. The noun is in constr. form, but joins badly with oil; I submit that there is a gap in the MS. before *shemen* and the missing text contained indication of other kinds of victuals. The first part of the passage of the Fragments reads thus in translation:

"As to altars which have become polluted with the offerings of the pagans, with the polluted victuals . . . oil deposited on them—those who touch them [*i.e.*, the victuals] will become contaminated just as they are contaminated."

The passage prohibits the consumption of victuals deposited as offerings by the pagans, just as Augustine did.²

The translation of the second part of the passage reads:

"As to all vessels [or utensils], nails or hooks in a wall which have been in a building containing an idol and have become contaminated by sacrifices, whether it be wrought gold . . ."

הַמֵּת—"the corpse," a paraphrastic reference to an idol. Cpr. Augustine: *in omnibus litteris Paganorum aut non inveniri, aut vix inveniri deos, qui non homines fuerint, mortuisque divini honores delati sunt*³; *illi [pagani] mortuos homines colunt*.⁴ Cpr. also Ps. cvi, 28: זָבַחַי מֵתִים.

אֶחָד כָּלִי מַעֲשֶׂה—Cpr. Nu. xxxi, 51. אֶחָד begins a sentence containing an enumeration of objects, but the MS. has a gap and the sentence is unfinished.

The contents of this passage of the Fragments show clearly that the environment in which its author lived was that of pagan Roman *coloni*, not the desert on the shores of the Dead Sea.

From the foregoing examination of these two passages, it emerges that the main reason for the diversity of opinion among

¹ IRENAEUS, *Adv. Haer.* III, 23, 1.

² Cpr. also MAXIMUS of Turin, *Sermo ci* (PL, lvii, 733): *potest non esse pollutus ubi cibum capit, quem sacrilegus cultor exercuit*.

³ *De Civ. Dei* viii. Cp. xxxvi.

⁴ *Sermo cclxxiii* (PL, xxxviii, 1249).

scholars concerning the Damascus Fragments and the Dead Sea Scrolls lies in the circumstance that the text has been misunderstood and meaningless translations of it propounded with an air of authority as containing the absolute truth. A supplementary reason lies in the general acceptance (on faith) of the deductions made by archæologists from the objects and coins found on the Qumrân site. I hope to deal with the archæological evidence on another occasion; it may suffice here to point out that the tables and the stucco platform found in a room of the Qumrân building are the furniture, not of a *scriptorium*, as maintained by the archæologists, but of a Christian chapel. They are *agape mensæ*, as anyone who cares may convince himself by simple reference to the article *Agape* in the Dictionnaire d'archéologie chrétienne et de liturgie.

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THE LITURGY OF HANUKKAH AND THE FIRST TWO BOOKS OF MACCABEES—II

(Continued from Vol. V, No. 3).

The Greek, Latin, and Syriac versions of *Maccabees* are equally emphatic about the importance of the time factor in the story of divine action on behalf of the Jews. The Greek text renders the above mentioned relevant part of *I Maccabees* iv, 54, in the following way: *Kata ton kairon kai kata ten hemeran . . . en ekeine¹ enekainistha (to thusiasterion).*

The Latin version,² according to L. and V., has *secundum tempus et secundum diem in ipsa renovatum est*. Or according to B: *Illo tempore in illa die in ipsa dedicata est*.

Most important is the Syriac text³: . . . אֵיךְ יוֹמָתָא וְאֵיךְ זִבְנָא הַנוֹן . . . בָּהּ בָּהוּ יוֹמָא. It is nearest to our Hebrew benediction though not exactly identical with it. The eulogy would thus express gratitude for deliverance from the Syrian enemy on the very day on which he sought Israel's destruction. We must not forget, however, that the exact formulation of the *Berakhah*, by Rabh and his circle, is no longer known to us and it is possible that the text of the traditional benediction as we know it, developed only gradually. The original doxology may have been as brief as follows: שְׁעִשָּׂה נִסִּים לְאַבוֹתֵינוּ בּוֹמָן הַזֶּה. This is the text we find both in the *She'eltoth de R. Aḥai Gaon*⁴ and in Saadya's *Siddur*.⁵ We also know of a Genizah fragment published by Dr. Wieder,⁶ which has a similar eulogy for Pesah: שְׁעִשָּׂה נִסִּים לְאַבוֹתֵינוּ בְּיָמִים אֵיכּוּ. It was not, however, accepted by later authorities.

In this connection the first Mishnah of the ninth chapter of *Berakhoth* should be recalled: "If a man sees a place where miracles have been wrought for Israel, he should say, 'Blessed be He that wrought miracles for our fathers in this place.' If he sees a place in Palestine from which idolatry had been rooted out, he

¹ W. KAPPLER'S edition of the *Vetus Testamentum Graecum*, 1936, has the variant *en ekeine te hemera*.

² *Les Anciens Traductions Latines des Maccabées*, ed. D. D. DE BRUYNE and SODAR, 1932.

³ P. A. DE LAGARDE, *Libri Veteris Testamenti Apocryphi Syriace*, 1861. The text in CERIANI'S *Translatio Syra-Pescitto*, Milan, 1876, reads: בְּיֹמָא דְּמַסְמַחֵי עֲמָסִיָּא בָּהּ אַחֲרֵיהּ.

⁴ They belong to the eighth century. Cf. ed. Dyhrenfurt, 1786, section 26, and all other editions. The Bodleian MS. 540=Hunt 343, fol. 48a (undated, probably of the fifteenth or sixteenth century), reads אֲשֶׁר עָשָׂה נִסִּים לְאַבוֹתֵינוּ בְּיָמֵי הָהֵם. Number 539=Opp. 70, fol. 33a (finished in 1492), reads אֲשֶׁר עָשָׂה נִסִּים לְאַבוֹתֵינוּ בְּיָמֵי הָהֵם. A second-hand of the same period (?) corrected on top of *ha'ellu: ha-hem*. Both manuscripts leave out *ba-zeman ha-zeh*. I am indebted to Mr. O. H. Lehmann, M.A., for this information. To my knowledge, no other manuscripts of this passage are available in this country.

⁵ Ed. DAVIDSON, 1941, p. 255.

⁶ *JJS* iv (1953), p.36.

should say, 'Blessed be He that rooted out idolatry from our land.'” The Gemara, *ad locum*, does not explain these two eulogies as having their historical setting in the Maccabean period, but it looks as if they too belonged originally to the same group as our benediction for Hanukkah. Be that as it may, since the time of R. Amram Gaon, who preceded Saadya by some fifty years, we encounter the text of our benediction in its traditional form.¹ The *Mahzor Vitry*² and Maimonides³ read *שעשה נסים לאבותינו בימים ההם ובזמן הזה*.

It is difficult to ascertain whether Aḥai's and Saadya's versions represent the *Urtext* of the two doxologies or whether they are merely abbreviations of the scribes, the more so as Saadya himself presupposes the fuller text in his '*al ha-nissim*' insertion to '*Amidah*⁴: על הנסים והנבורות והתשועות והפזות והפורקן שעשתה עמנו ועם אבותינו בימים ההם ובזמן הזה וכו' Jacob Mann also published a Genizah fragment of a similar pattern for Purim in which stand side by side.⁵

The suggestion, therefore, to connect the traditional formula of our benediction with *I Maccabees* iv, 54, and with Josephus' *Antiquities* stands, even if we assume a late indirect influence in the wake of the rediscovery of apocryphal literature during the last few centuries of the first millennium.

There is also the possibility that the fuller text of the eulogy represents an attempt of harmonisation between the various ancient usages with or without a side-glance at the historical records.

The *Berakhah* *שהחינו וקימנו והניענו לזמן הזה* which, apart from many other occasions, is pronounced on the first day of Hanukkah and Purim, may well have its prototype in the *Second Book of Maccabees*. In connection with Judas's victory over Nicanor, we read the following sentence in chapter viii, 27: "After collecting the arms of the enemy, they (the Jews) attended to the duties of the Sabbath day, loudly blessing and praising the Lord, who had preserved them unto this day."⁶ Though there is a Scriptural passage which uses the verb "*leqayyem*" in the same sense,⁷ we do not find the combination with *la-zeman ha-zeh*.

As to the '*al ha-nissim*' insertion for Hanukkah and Purim in the '*Amidah*', it is first referred to in the *Tosefta Berakhoth* iii, 9, but the exact wording is not transmitted in this passage. The same applies to the Gemara in *Shabbath* 24a and to the *She'eltoth de*

¹ *Siddur R. Amram*, ed. FRUMKIN, ii, p. 82.

² Ed. S. HURWITZ, p. 198.

³ *Hilkhoth Meghillah we-Hanukkah*, §3.

⁴ Cf. *Siddur Saadya*, l.c. Some manuscripts of the corresponding text for the '*al ha-nissim*' insertion for Purim have no *waw* between *ba-yamim ha-hem* and *ba-zeman ha-zeh*. R. AMRAM GAON reads simply *שהחיו לנו ימים ההם וזמן הזה* in his '*al ha-nissim*' insertion.

⁵ *HUCA* ii (1925), p. 309.

⁶ The Greek version uses the phrase "*diasozein eis ten hemeran*." In Latin B.H.P. we read: "*qui eos conservavit in hunc diem*." L, X, V, and the two Syriac versions have slightly different texts.

⁷ Psalm cxix, 28.

R. Ahai Gaon.¹ Only *Massekheh Soferim*² has a quotation for Hanukkah in its shortest form³: ואומרים בהודיה וכניסי פלאות ותשועות כהניך אשר עשית בימי מתתיהו בן יוחנן כהן גדול השמונאי ובניו כך עשה עמנו.

From the time of R. Amram onwards we have texts which are much nearer to our traditional wording,⁴ and which can be traced back almost entirely to *Maccabees* or their medieval adaptations. They betray a fuller consciousness of the impact of the divine intervention in the Hasmonean struggle. We mentioned before that from the eighth century onwards apocryphal literature found its way back to Hebrew historiography, poetry, Midrash, and last but not least to the various versions of the *Meghillath Antiochus*.

R. Amram's formula of the 'al ha-nissim insertion reflects the new influence. He adds the following nouns to those given in the text of *Massekheh Soferim*: נבורות, פדות, פורקן, Saadya, *Mahzor Vitry*, and Maimonides have an almost identical wording. The additions and omissions are significant. Originally, the Gemara and *Pesiqta* stressed the miracle of the oil or the lances' found in the Temple. People were interested in *Heilsgeschichte* almost to the exclusion of anything else. Now the actual events of the Hasmonean epoch are brought to the fore. It is true, the miracle is still God's, and Mattathias and his sons, as well as Mordecai and Esther, are merely tools in His hands to pave the paths for His plans. Nevertheless, the new phraseology is saturated with new meaning. Mighty deeds, wars, deliverance, and liberation, even if wrought by God through His messengers, have a more precise meaning than wondrous deeds and help. So much so, that the text of the introductory formula of 'al ha-nissim becomes somewhat difficult to understand. The oil miracle could be performed in one or eight days *ba-yamim ha-hem ba-zeman ha-zeh*, but not the mighty deeds and wars which preceded the liberation.

¹ R. AHAI GAON is the first, however, to call the insertion 'al ha-nissim.

² Chapter xx, p. 346. According to HIGGER, o.c., pp. 78ff., the work was compiled in Palestine after the redaction of the Jerusalem Talmud, though it contains later additions of Babylonian colouring.

³ In the *modim* benediction of the 'Amidah.

⁴ For our purpose it is sufficient to concern ourselves with the German and Balkan rites. According to them, the reference to miracles in the present or future, which was originally at the end of the 'al ha-nissim insertion, has been left out since the days of Tosafoth (*Shabbath* 24a; s.v. *mazkir*). For Purim, *Massekheh Soferim* adds וניסי מרדכי ואסתר מוכיני אותן בהודיה ושניהם נוכרין בנרכת הארץ [של נרכת המון]. The earliest source for this insertion of 'al ha-nissim in the Grace after Meals is to be found in *Yerushalmi Berakhoth* 11d, but there again it is in connection with Hanukkah only, and not yet a *Halakhah*. *Soferim*'s version of *ha-neroeth hallalu* (chapter xx, *Halakhah* 3) adds little to the vocabulary of 'al ha-nissim and does not concern us here.

⁵ For *gebhuroth* cf. also JELLINEK, *Beth ha-midrash* v, p. 87, and *Targum on I Samuel* ii, 4.

⁶ See the text of *Pesiqta Rabbati* quoted above on p. 104, n. 4. The Genizah fragment published by MANN has already *peduth* and *purqan*.

⁷ *Pesiqta Rabbati*, Section 2.

In the books of Maccabees, especially in the First, but also in the Second, Mattathias and his sons fight with unfailing courage, one might say, in the certainty of God's help; in the Gemara they hardly act at all. Theologically, our '*al ha-nissim*' insertion stands in the middle between the two. The heroes are not mentioned individually, but covered by the general introduction *bime mattithyahu*, etc.

A few references may be given to substantiate these statements. Liberation, or deliverance (*soteria*), was achieved by Judas,¹ his name came near even to the king, and every nation told of his battles.² His fortitude (*andragathia*), and that of his brothers, Simon and Jonathan, inspire friend and foe.³ Needless to say that *Maccabees* also refer strength, help, or deliverance and miracles to God. Victory in battle does not depend on the magnitude of the army, but strength comes from Heaven.⁴ Only by the hands of the chosen ones Israel is given deliverance.⁵ By God's help Judas and his men gain victory.⁶ Heavenly apparitions (*epifaneiai*) are vouchsafed to those that vie with one another in manful deeds for the religion of the Jews,⁷ and Judas prays to Him who is a performer of miracles, '*oseh nifla'oth*'.⁸

It is clear from all this that the introductory passage to '*al ha-nissim*' in the text which we have today was originally coined for Hanukkah only, even if R. Amram's Siddur, our first full source of it, no longer makes any distinction between the text for Hanukkah and that for Purim. The *Book of Esther* offers none of the nouns so frequently referred to in *Maccabees*.⁹

As we shall see instantly, the opposite process, a transference of the Purim liturgy to that of Hanukkah, also took place.

The main part of the '*al ha-nissim*' insertion for Hanukkah begins with a reference to the time of Mattathias ben Johanan, the High Priest, the Hasmonean, and his sons. Here, the historical and theological distance from the *Books of Maccabees* should be noted. Neither Judas, the Maccabean,¹⁰ nor Simon, the High Priest,¹¹ are mentioned in '*al ha-nissim*'. On the other hand, the name Hasmonean does not occur in *Maccabees*, and is first to be met with in Josephus.¹² There was no occasion to speak of the royal house in an insertion, which only deals with the religious achievements of Mattathias and his sons. The riddle of the High Priest

¹ *I Maccabees* iii, 6.

² *I Maccabees* iii, 26.

³ *I Maccabees* v, 56; x, 15.

⁴ *I Maccabees* iii, 19: *Ek tou ouranou ischus*.

⁵ *I Maccabees* v, 62.

⁶ *II Maccabees* xii, 11: *Dia ten para tou theou boetheian*; see also xiii, 15-17; xv, 7, 8, 27, 35.

⁷ *II Maccabees* ii, 21.

⁸ *II Maccabees* xv, 21: *Teratopoios kurios*.

⁹ *Gebhurah* in the singular in *Esther* x, 2, refers to Ahasuerus.

¹⁰ As for instance, in *I Maccabees* iii, 1, and *II Maccabees* ii, 19.

¹¹ As in *I Maccabees* xiv, 41ff.

¹² *Bellum Judaicum* i, 36, and *Antiquities* xii, 265. See also ABEL, o.c., pp. 3f

Mattathias can no longer be solved with certainty.¹ Neither *Maccabees* nor Josephus refer to him as *archiereus*, though he often appears as such in Rabbinic literature.² One may perhaps connect the claim to High Priesthood with *I Maccabees* ii, 54. Mattathias reminds his sons of their "father" Phinehas, who, as a reward for his zeal, obtained the covenant of everlasting priesthood. Abel draws attention to the Phinehas passage in *Sirach* xlv, 24, which has כהונה גדולה עד עולם instead of כהונת עולם, the term used in the original wording of *Numbers* xxv, 13.

The close relationship between להשכיחם תורתך ולהעבירם מחקי רצונך and *I Maccabees* i, 49, has already been referred to at the beginning of this paper.

The passage ואתה ברחמיך הרבים עמדת להם בעת צרתם רבת את ריבם דנת את דינם נקמת את נקמתם has its main place in the liturgy of Purim. Almost all phrases occur with slight variations in the benediction which is to be pronounced after the reading of the *Megillah*. The Gemara in *Megillah* 21b refers these sentences explicitly to Purim. They must have entered the 'al ha-nissim insertion for Hanukkah between the final editing of *Massekhet Soferim* and the time of the compilation of the *Siddur* of R. Amram Gaon. This does not mean that similar thoughts cannot be traced in *Maccabees*. God in His mercy saves Israel from all evil, punishes the enemy that deserves punishment, and is altogether the champion of the Jews.³ It was the stress on divine deliverance from deadly danger in the stories of Purim and Hanukkah which brought about an interchange of literary motifs both in the original sources and their liturgical or poetical offshoots.

The sentence מסרת גבורים ביד חלשים ורבים ביד מעטים וממאים ביד טהורים ורשעים ביד צדיקים וזדים ביד עושקי תורתך corresponds closely, if not quite literally, to the literary colouring of *Maccabees*: "Our God who handed over the godless be praised for all things."⁵ The forces of the enemy are described as strong men, *gibborim*.⁶ Moreover, the following dialogue is reported to have taken place between Judas and his followers, immediately before their battle with the Syrian army: "How," they said, "shall we be able, being a small company, to fight against so great and strong a multitude? And we, for our part, are faint, having tasted

¹ For a peculiar formula, cf. *Megillah* 11a ושמנוא' ובנו וסמיתו כן גדול.

² See, for example, *Targum Canticles* vi, 7, and *Pesiqta Rabbati*, Section 2.

³ Cf. e.g., *II Maccabees* i, 24f.; *II*, iv, 38; *II*, viii, 36; *II*, xiv, 34; *II*, x, 26; *I Maccabees* ii, 67, speaks of vengeance.

⁴ For a similar formula see Midrash for Hanukkah, ed. JELLINEK, *Beth ha-Midrash* vi, 7f. ואתה שמיא מסר כל גברי עממא בידהון בחר דא עלין בני חשמונאי לבית מקדשא ובנו תרעין וכו'. JELLINEK did not see how closely this version resembles *I Maccabees* iv, 37ff., and our version of 'al ha-nissim.

⁵ *II Maccabees* i, 17, "Kata panta eulogetos hemon ho theos, hos paredokentous asebesantas . . ."

⁶ *I Maccabees* iii, 38, "androi dunatoi."

no food this day," and Judas answered, "It is an easy thing for many to be shut up in the hands of a few, and there is no difference in the sight of Heaven to save by many or by few. . . . They come to us in fullness of insolence and lawlessness . . . but we fight for our lives and our laws. And He Himself will discomfort them before our face."¹ The similarity between the passage in the liturgy and that in the *First Book of Maccabees* is so obvious that no further comment is necessary. The term *halashim*² of the liturgy acquires a new, clear sense, as it refers to the lack of food among the men of Judah. It looks as if the expression *zedim* in '*al ha-nissim*' stands for the foreign enemy who came "in fullness of insolence and lawlessness" (*en plethei hubreos kai anomias*). But it may also signify those Jews who were traitors to their cause (*andres anomoi kai asebeis ex Israel*). Terms for lawless, godless, and wicked are abundant, especially in the *First Book of Maccabees*, and may refer to Greeks or Jews.³ Saadya reads עושי תורתך עושקי תורתך. Both versions are possible. We have references to those who occupy themselves with the law and to those who fulfil it.⁴

If the next two sentences have their ultimate source in *Maccabees*, they have undergone significant theological transformations, before they were transplanted to the liturgy. Mattathias admonishes his children to remember the deeds of their fathers in order to achieve great fame and an immortal name.⁵ Seron, the commander of the enemy, is said to have boasted, "I will make a name for myself, and get me glory in the kingdom."⁶ After the victory of Judas over Gorgias, we read: "And Israel had a great deliverance that day."⁷ The liturgy mocks, as it were, at Seron, but implicitly disapproves also of Mattathias. The sentence about the liberation of Israel is cut off from its context, the praise of Judas. With magnificent religious one-sidedness we merely read⁸: ולך עשית שם גדול וקדוש בעולםך ולעמך ישראל עשית תשועה גדולה ופורקן כהיום הזה.

It is in perfect agreement with the order of the *First Book of Maccabees*, that the '*al ha-nissim*' insertion concludes with the purification of the Sanctuary, with the kindling of lights in it, and with the ordinance of the eight days of Hanukkah in order to "thank and praise Thy great Name." These sentences are an almost exact quotation of *I Maccabees* iv, 37, 43, 50, and 59, with the exception of the last sentence; for the *First Book of Maccabees*⁹

¹ *I Maccabees* iii, 17ff.

² Cf. *Targum* on *I Samuel* ii, 4, quoted above, p. 103.

³ *I Maccabees* i, 34; iii, 5f., 15; vi, 21; vii, 5, etc.

⁴ Cf. *I Maccabees* ii, 42 and ii, 67.

⁵ *I Maccabees* ii, 51.

⁶ *I Maccabees* iii, 14: ". . . doxasthesomai en te basileia."

⁷ *I Maccabees* iv, 25.

⁸ For possible Biblical sources of this sentence, compare *Is.* lxiii, 12, 14, and *Jer.* xxxii, 20.

⁹ The *Second Book of Maccabees* x, 8, has a similar wording.

ascribes the promulgation of the law to celebrate Hanukkah year by year to Judas, his brethren, and the whole community of Israel, whereas our liturgy again excludes Judas, thus following the anonymous traditions of the Gemara. Moreover, the *First Book of Maccabees* ends the story of the rededication of the Temple "with joy and gladness," whilst 'al ha-nissim concludes with להודות ולהלל לשמן הנדול. But even these last words can be traced back to *I Maccabees* iv, 55, "And all the people fell upon their faces and worshipped and gave praise unto Heaven, Who had prospered them," or better still to the form of prayer recorded in *I Maccabees* iv, 24, after the decisive victory of Judas over Gorgias: "On their return they praised and glorified Heaven (God) because He is good and His mercy endureth for ever."¹ The Greek terms *humnein* and *eulogein eis to ouranon* appear to be synonymous with להודות ולהלל לשמן. We are no longer able to say whether the passages in *Maccabees* stood originally for the recital of the whole "Hallel," as we know it from the liturgy, or only for Psalm cxviii or cxxxvi, but it is almost certain that the later practice of completing the so-called "Hallel" Psalms (cxiii-cxviii) on Hanukkah is based on these early traditions. The *Second Book of Maccabees* says in addition that, *having been saved from great danger, we [the Jews] render great thanks to God* . . .² This may be a reference to what was later known as the "Great Hallel."³

The Gemara in *Taanith* 28b mentions those holidays on which "Hallel" should be completed; amongst them is Hanukkah. That this was felt to be unusual for this festival appears from Rashi's comment on the passage. He maintains that the *prophets* ordered it to be said on every festive occasion and in connection with every trouble from which Israel was redeemed. It is as if it were a law of the Torah.⁴ The Gemara in *Megillah* 14a raises the question as to why "Hallel" is to be said on Hanukkah and not on Purim. The answer is that only events which took place in Palestine justify such ordinances. R. Nahman holds the view that the reading of the scroll of Esther is equivalent to the reading of "Hallel" קרייתא זו הלילא. The *Pesiqta Rabbati*, chapter 2, asks the same question and gives a similar harmonising reply. Its wording is noteworthy: "When the Holy One, blessed be He, defeated the kingdom of Greece, they (the Hasmoneans) began to give song and praise [to the Lord]." התחילו נותנים הימנון ושבה . . . The noun *humnos* is here hebraised and stands as a *terminus technicus* for "Hallel" as the above quoted verb *humnein* for saying "Hallel."

¹ On the Greek text, see ABEL *ad loc.*

² *Ek megalon kindunon hupo tou theou sesomenoi megalos eucharistoumen.* For the end of the text see again ABEL, *a.l.*

³ For full references on the "Great Hallel" in Rabbinic literature, see ELIEZER LEVI, *Yesodhoth ha-Tefillah*, Tel Aviv, 1947, p. 193.

⁴ The source of his remark is *Pesahim* 117a. Cf. also the scholion of *Megillath Taanith* on the 25th of Kislev, ed. LICHTENSTEIN, p. 341.

Finally, *Massekhet Soferim*¹ rules that one must complete "Hallel" on the eight days of Hanukkah, make a blessing before reciting it, and read it with a pleasant voice (בנעימה). There can thus be little doubt that *Maccabees* contain the first records of usages which later on became Halakhah.²

It appears from our inquiry that it took a millennium to create, develop, and co-ordinate the liturgy of Hanukkah and Purim. When the canon was finally closed, the *Book of Esther* was included. *Maccabees* had to go underground because the events recorded were very late, and the descendants of the Hasmoneans had misused their powers as priests and kings. Yet, the sacred zeal of the early Hasmoneans could not be forgotten, their achievements were seen as fulfilment of Biblical prophecies, and a benediction here, a Midrash and Halakhah there, reflected the former glory of a great period and its literary monument. Above all, the festival of Hanukkah was established in the heart of the people. It was compensated for not having a sacred book of its own by an early established liturgy. We saw that the three benedictions for Hanukkah were fixed before those of Purim, and that even the introductory passage of the 'al ha-nissim insertion was in the first instance coined for Hanukkah. In the end the rejected *Maccabees*, or their literary adaptations, came into their full right by being placed in the main body of 'al ha-nissim side by side with quotations from *Esther*.

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¹ Ed. HIGGER, p. 347.

² For the reading of the Law and Prophets on Hanukkah see KRAUSS, *o.c.*, pp. 27, 37.

DIFFERENCES OF ESTATES WITHIN PRE-EMANCIPATION JEWRY

A STUDY IN THE SOCIAL STRUCTURE OF BOHEMIAN PROVINCIAL JEWRY

In the case brought by the Jewish Lady ("Oberjüdin") Katharina Kauder, against the "subject Jew" ("Unterjude"), Abraham Loeb, in 1780, in the small market place of Frauenberg, in South Bohemia, judgment was given according to which Abraham Loeb "was under no circumstances to resell, even in the smallest quantity, products which he had bought; otherwise he would lose the manorial protection."¹ It appears thus that Abraham Loeb was not empowered either to sell or to buy on his own account. Another example: The wealthy tobacco merchant, of Krumlov, Loeb Isaac, succeeded in persuading the Bailiff of the Manor to take an interest in his wish to be admitted as a manorially protected Jew. The Bailiff, after a series of petitions in this matter, finally received a reply from the Royal Chancery to the effect that Loeb Isaac was not to be admitted as a "protected Jew" but only as a "Bestandt Jude" (Jew on the rent roll), "and as such he is not entitled to engage in commerce" (1787).² Finally, in the census of Bohemian provincial Jewry, dated 1724, it is stated that "Hirschel Moyses was born as a Jewish serf" (Plz. 2, I).³

These examples do not fit into the traditional conception of a

¹ The details of this case are discussed in *Zion*, 1943, p. 165.

² *Prince Schwarzenberg Archive*; Czesky Krumlov (Krumau), in Bohemia, I A 5 A J 1. I was commissioned in 1937-38 by the "Society for the History of Jews in Czechoslovakia" to investigate the archives in Krumlov and Trebon, and I made a list of the material concerning Jews and transcripts of part of it. These are now in my possession as well as a card index of Jewish heads of families and their professions compiled from the Census (in the Prague Archives) of Bohemian provincial Jewry in 1724. I used these sources for a statistical and economic study of the provincial Jewry in Bohemia, which was published in several articles in *Zion*, 1944, 1947, 1948; but I had to leave out at the time the consideration of the legal and social conditions, which could be examined and understood properly only in relation to the Gentile population among whom the Jews lived. The lack of adequate resources in Jerusalem made the execution of this task impossible. Thanks, however, to a scholarship awarded to me by the British Federation of University Women (on the recommendation of the Israel Federation) I have been able now to undertake the necessary research in the helpful atmosphere of the British Museum.

³ This indication refers to the card-index of the heads of families. The letters are abbreviations of the Bohemian districts, introduced by PALACKY; the Arabic figures signify the number of the manorial lord in the district and the Roman figures refer to the pages of the long statistical entries. The spelling of names of persons and places, as long as they refer to the seventeenth and eighteenth centuries, reproduces that of the documents, that is, the spelling is mostly German. But names referring to the present times are given in the official spelling, that is, in Czech. The abbreviations of district names introduced by PALACKY refer also to the Czech spelling.

uniform Jewish society before the period of Emancipation, according to which there existed in Jewry social differentiation but not differentiation of Estate.¹ It appears, on the contrary, that even among Jews there was a social order based on Estates and there was no parity of birth in it. A Jew, too, was born into a definite Jewish Estate: money, which neither Abraham Loebl nor the tobacco merchant lacked, had no power to break down the barriers which were observed both by Christian and Jewish contemporary society.

It is the purpose of the following investigations to attempt to explain this situation. It is clear, at least, that the first two examples quoted above represent the final stage of development, for evidently the legal status of the persons concerned no longer corresponds with their social position. In order to understand how this situation has arisen it is necessary to go back to the beginning. That is, we must attempt to describe the social and legal conditions under which the Jews of the Bohemian Provincial Lands lived before the period of Emancipation. The task is not easy because there are no sources which offer us information about these conditions and we can do nothing else but attempt to reach our goal by a detour.

This detour consists in an attempt to explain the institution which at that time was considered both by Jews and Gentiles the Magna Charta of the law of Jewry, that is to say, "Der Judenschutz" (Protection of Jewry). The "Judenschutz" was not only a juridical but also a financial, or rather a fiscal, institution. It had to be paid in dear money, and this point was so natural to contemporaries that the tax itself paid for obtaining the "Judenschutz" was also called "Judenschutz," "Ochranna" in Czech, or "Schutz," in Czech very often spelt "Shuc." It was very important to whom the tax was to be paid, what it was to be paid for, when and how, and above all, who paid it. Since the Jewish central and local authorities were interested in all these matters to an exceptional degree, the source material is particularly abundant in this respect. For the purpose of our investigation this is a crucial point, because the distribution of taxes in a society composed of Estates had, apart from its fiscal significance, also a legal and social meaning. Some Estates were entitled to pay a certain type of tax, or rather were obliged to pay these taxes, and therefore it is possible to tell to which Estate a man belonged from the taxes he paid.² The scope of the following

¹ M. SEMYATICKI (*Hezqath ha-Qehillah be-Polin in Ha-Mishpat Ha-'Ibhri*, V, 1936) assumes this conception repeatedly. Thus, for example, he states on p. 206 that in the Middle Ages citizenship belonged to the sphere of public, not private, law.

² The fundamental work in this respect is still KARL ZEUMER, *Die deutschen Staedtesteuern*, Leipzig, 1878 (*Staats-und Sozialwiss. Forschungen*, I, ed. SCHMOLLER). AD. ERLER (*Bürgerrecht und Steuerpflicht im mittelalterlichen Staedlewesen; Frankfurter wissenschaftliche Beiträge, Rechts-und Staatswissenschaftliche Reihe* ii, 1939), repeats merely ZEUMER's results, apart from adding information about conditions in Italy and speculations dictated by the spirit of the period about the character of the German "Volk."

investigation is thus to explain the nature of the "Judenschutz" in regard to the measures of protection it promised as well as in regard to the terms of payment. The results of this investigation will supply us with the means of explaining the social and legal conditions of Bohemian Provincial Jewry to which a further study will be devoted. To put it briefly, our first task is to clarify that complex of notions which forms what Guido Kisch calls "Jewry Law," that is to say, "the non-Jewish element in the history of the Jews." For the purpose of this investigation we are not interested however in "Jewry Law" and in its component parts—the "Judenschutz" is such a part—as a juridical concept, but in its relation to actual life; and therefore it is necessary to consider the institution of the "Judenschutz" as it was in practice, that is to say, in its real and historical field of application. In our case the field of application is the Bohemian Provincial Jewry. Our task is thus to find out what the "Judenschutz" was for those to whom it was applied. It would be a desirable thing to quote sources and witnesses from Jewish literature for every institution which is known exclusively from non-Jewish sources. Only Jewish sources can tell us in what way the institutions imposed upon Jews from the outside were operative in actual life. I must, however, confess that I have not succeeded in finding Jewish sources for all the cases with which I am dealing and not even for the majority of them.¹

Beside its relevance to Jewish society, an institution like that of the "Judenschutz" should not be considered in isolation from the general social life. It is necessary, therefore, to sketch the general social and political framework within which Jewry lived.

Owing to the vicissitudes of her history,² Bohemia stands, from the constitutional point of view, somehow midway between the "golden freedom of Estates" in Poland and the Absolutism prevailing in Western and Central Europe. As far as Jews are concerned, this means that the Government in Vienna were unable to carry out all their intentions because the territorial lords of Bohemia represented a more or less heavy counterweight. We shall meet with this situation, characterised by this duality of forces, when we come to consider the "Judenschutz" and the Jewish taxes. Legal and social conditions during the seventeenth and eighteenth centuries were more or less alike in the whole of Europe. Until they were abolished by the French Revolution differences between Estates were pushed to their extremes, at least on paper. The historical reality was, however, quite different. In Bohemia there were not three but four

¹ This does not mean that such sources do not exist. The co-operation of scholars who are more familiar with this material than I am would be especially welcome.

² One may mention only the Hussite revolution and the counter-reformation introduced into Bohemia by Vienna after the battle of the White Mountain (1620).

Estates: Lords, Clergy, Knights,¹ and Burghers of the free (royal) towns. Only those who belonged to these four Estates were entitled to possess feudal land (Dominikalboden), while the "subject" peasants and citizens of "subject" towns possessed only rural land (Rustikalboden). The "Dominikalboden" was free of taxes up to 1776; all the taxes came from rural lands. Apart from the corvée, which was unpaid, the "subject" section of the population had to carry the whole burden of the taxation of the country from their own holdings because, until the beginning of Mercantilism, only Jews and land were subject to taxation.²

Just as there existed a well-determined relationship between the Estate to which a person belonged and the taxes he paid, there also existed, in a society based on Estates, a relationship between the Estate of a person and the ground or land which he occupied.³ This relationship concerned duties (for example, the payment of taxes) as well as rights. Thus, for instance, the right of citizenship, without which no "burgher occupation" (commerce or trade)⁴ was permitted, was often dependent on the possession of a burgher house.⁵ A domiciled ("Angesessener") citizen could not be thrown into prison on the basis of a simple denunciation and without court procedure, like a non-domiciled individual. In some respects, including even the relationship to the holding of ground, *i.e.*, the possession of a house, this differentiation of status is also valid for Jews to a degree which, as far as I can see, has not been hitherto sufficiently clarified. It must be stated, however, that (as will be shown in a later study) the criteria for differentiation within Jewry were different from those prevailing among the non-Jewish population.

The Assurances of the "Judenschutz"

Jewish history is full of cases of breaking as well as of keeping the assurances contained in the "Judenschutz." The investigation of the violent breaches of the "Judenschutz" belongs rather to the study of the "political" aspect of Jewish history; it is, however, the

¹ See *Alphabetischer Auszug der gesamten Alten und Neuen Boehmischen Gesetze*, Prague, 1739 (quoted henceforth as *Auszug*), p. 341: "The Knights form the Third Estate in Bohemia."

² See J. PEKAR, *Ceské Katastry*, 2nd ed. 1932.

³ It made a great difference whether one was domiciled ("angesessen," "sass") on the land or in a house, or only "dwelt" on the land or in a house or room as a tenant ("Inmann"). The land exercised some kind of dominion over the human being: "on whose land the subject woman gives birth to a child, the latter becomes also subject to the lord thereof." *Q 19, Vollstaendiger Auszug der Verneuerten Kaenigl. Landesordnung*, Nürnberg, 1686 (quoted henceforth as *Landesordnung*), p. 288.

⁴ *Auszug*, p. 72.

⁵ The literature on this subject is very rich. See especially K. BEYERLE, *Grundeigentumsverhaeltnisse und Bürgerrecht im M. A. Konstanz: Das Salmannengericht*, 1900. J. HARTWIG, *Der Luebecker Schloss bis zur Reformationszeit*, Diss. Goettingen, 1903. ZEUMER, *op. cit.*

proper task of social history to investigate what the "Judenschutz" meant when it was observed. We have to ask first what was the precise content of the assurances given in a "Judenschutz." The general opinion is that the "Judenschutz" contained a permit of residence either without a time limit or limited in time, a permit giving freedom from interference within the time limits granted.¹ For this privilege the Jews had to pay protection money ("Schutzgeld"), which was exceptionally high in relation to the taxes paid by the rest of the population.² Bohemian historical sources show, however, that the significance of the "Judenschutz" was not limited only to the permit of residence but included also the permit for work, and particularly the permit to engage in commerce: the type of work characteristic of a medieval town.³ During the early Middle Ages Jewish commerce was commerce of goods⁴; during the latter Middle Ages it became commerce of money,⁵ and in modern times in Bohemia it again became commerce of goods. The "Judenschutz" in Bohemia comprised, therefore, beside the permit of residence, the permit to trade in goods and

¹ As the more recent representatives of this opinion, I should like to mention the unsigned article *Privileges* in the *Universal Jewish Encyclopedia*, viii, p. 648, in which the protection promised to certain Jews by Louis the Pious is described as "a protection for their lives and property, freedom from tolls and other taxes, the right to dispose of their property as they wished, an acceptance as witnesses in law courts. . . . In return these Jews were obligated to furnish services [i.e., to pay high taxes] to the imperial palace." (See also *op. cit.*, ix, 5.) Again, G. KISCH (*The Jews in Medieval Germany*, Chicago, 1949) offers, as far as I could see, only once the following analysis on p. 136: "Every charter of protection contains three basic clauses, namely, the protective clause granting inclusion in the king's protection, the peace ban clause, which forbids doing any harm to the protected person, and the complaint clause, by which the protected person could invoke immediate royal jurisdiction." KISCH remarks, moreover, that the charters of protection assured freedom of commerce to non-Jewish as well as to Jewish merchants.

² This was disclosed by the comparison of the taxes paid by Jews and Christians respectively as listed in the Theresia census (Zemsky Archive in Prague). The contemporaries were well aware of this fact; J. J. BECK writes in his *Tractatus de Juribus Judaeorum*, Nürnberg, 1739, p. 388: "Since they (the Jews) have to pay rather high protection money . . ."

³ In many towns (Freiburg, Regensburg, Luebeck) citizens' right was bound up with the profession as merchant. See ZEUMER, HARTWIG, and GÖTHEIN, *Wirtschaftsgeschichte des Schwarzwaldes*, 1910. I shall mention in a later study how commerce as the basis of the medieval town affected the constitutional position of Jews.

⁴ See L. RABINOWITZ, *Jewish Merchant Adventurers*, London, 1948.

⁵ This view was held already by K. BÜCHER in his *Die Bevölkerung von Frankfurt am Main im XIV und XV Jahrhundert*, 1886. He writes that the Jew in the Middle Ages obtained "through payment of taxes the right to reside in the town during a fixed period and to ply his trade, that is, . . . to lend money on interest. The Jew who was no usurer paid no taxes" (p. 528). BÜCHER's statement that the right to trade is tantamount to the right of usury is related to the period of history which he had studied, that is, the late Middle Ages, as well as to his antisemitic attitude. Among recent authors, as far as I could ascertain, only IRVING A. AGUS mentions the economic factor in connection with the "Judenschutz." He writes in his *Rabbi Meir of Rothenburg*, Philadelphia, 1947, i, p. 56: ". . . the Jews were willing to pay for the privilege of settling there for protection of life and property and for the right to engage in business with local inhabitants."

money. Three different types of the "Judenschutz" in Bohemia must, however, be distinguished from each other, and it will be opportune to describe them separately.

"JUDENSCHUTZ" ASSURANCES GRANTED BY THE CENTRAL
(ROYAL) AUTHORITY.

Bohemian Jewry was the recipient, firstly, of Royal Privileges ; but it must be stated that in the three privileges granted to Bohemian Jewry during the Middle Ages, the right to engage in commerce is not explicitly mentioned, because it is assumed as being obvious.¹ Beginning from the modern period, however, the formula of the privileges becomes more exact, to such an extent that it is possible to determine from the wording of the privileges the kind of commerce in which Jews were engaged, that is to say, money, goods, and the kinds of goods. In the Jewish privilege of 1497, granted by Vladislav, it is stated in the preamble in general terms that since the Jews pay taxes they must have the right to ply a trade.² The special regulations that were issued afterwards show, however, that Jewish trade consisted at that period mostly of money lending. In the privilege of 1567, granted by Maximilian II, it is stated to the contrary that "those Jews who are now in the Kingdom of Bohemia and have together with their wives and children dwellings in the country should remain there as well as their issue and ply their trade and commerce in an honourable and just manner."³ Maximilian, who had already the intention of limiting the number

¹ PREMYSL OTOKAR II grants in his first Jewry Privilege (1254) "universis Judeis in regno nostro et dominio constitutis hec iura," which consist of 33 special regulations regarding mainly money lending. (Ed. BONDY DWORSKY, *Zur Geschichte der Juden in Boehmen, Maehren und Schlesien*, 906-1260, Vols. i-ii, Prague, 1906, No. 24—this work will be referred to henceforth as BD.) Otokar's second Jewry Privilege, dated 1268 (BD, 27), is clearly more strongly influenced by the Jewry Privilege granted by Frederik II in 1236 than his first Privilege. Otokar declares in the Second Privilege that the Jews "ad nostram cameram pertineant" and that their privileges are renewed "ad evidentiore[m] notitiam et cautelam eorum statuta et privilegia." Cf. O. STUBBE, *Die Juden in Deutschland*, 1866; *Anhang: Die Judenprivilegien*, and p. 7, note 3. Charles IV confirms in 1365 Otokar's Privilege "pro parte Judeorum Pragensium necnon omnium aliorum Judeorum in regno nostro Boemie . . . consistentium camere nostre servorum" (*Codex Juris Municipalis Regni Bohemiae*, i, Prague, 1886, p. 99). Charles IV refers to the "servi camere," but mentions neither "protectio" nor "cautela." Ladislav Posthumous confirms in 1454 the Privilege granted by Charles IV, but this time the language is Czech. (BD, 249.)

² BD, 292: The Jews should "pay us taxes and have the right to ply their trade." Vladislav confirms this Privilege in 1501 (BD, 306), and, again, Ferdinand in 1527 (BD, 376). All these privileges grant the permit of residence for "all eternity," which, of course, did not prevent that several decrees of expulsion of Jews were issued in the course of the sixteenth century—decrees which were, however, sooner or later totally or partially revoked. See STEINHERZ, *Sage und Geschichte in Jahrbuch für Geschichte der Juden in der CSR*, ix (referred to henceforth as *Jb*).

³ BD, 698.

of Jews and the houses in their possession to the *status quo* and of establishing as the receivers of the protection only those Jews who possessed their own dwellings,¹ issued no special regulations concerning commerce in money but referred explicitly to commerce in goods.

The Emperor Rudolf II, in 1577, confirmed only the Privilege granted by Vladislav.² In the Privilege granted by the Emperor Mathias in 1611 we find the first description of Jewish commerce in goods: "to confirm graciously the permission given to them (the Jews) to trade and move freely, as it has been granted to them to sell all kind of hides and old clothes as well as haberdashery, victuals, and cloth in measure (ell) and weight."³ The Jews thus traded by going round the country with hides, old clothes, haberdashery, etc., that is to say, they were engaged in peddling.

The political transformation resultant on the Battle of the White Mountain brought no essential change in the economic life of Bohemian Jewry, except, perhaps, that the paralysis of economic life during the thirty years of war made Jewish trade even more important for the country than it was before.⁴ This explains why the Privilege, granted in 1627 by Ferdinand II, is practically the same as that of 1611, indeed even more favourable to the Jews in a few instances.⁵ Apart from the 40,000 florins which the Jews had to pay to the Emperor in Vienna, they had to pay in addition only "what is their due contribution from ancient times to be paid to the manorial Lords among whom they lived."

It is clear that the Jews in Bohemia traded in money at the same time as in goods. But already in the seventeenth century money trade was not their main occupation. In fact, Ferdinand III declared in 1644 that "the whole Jewish *commercium* (occupation) consists mostly in trading."⁶ The census of provincial Jewry in

¹ It is certainly not due to chance that Maximilian does not refer to Jews as being "domiciled," although the prohibition for Jews to own immovable property was introduced by Parliament only in 1650. (Cf. *Auszug*, p. 224.) Even after 1650 this prohibition was only so far adhered to that the acquisition of new houses was made difficult for Jews. (Cf. ROUBIK, *Die Judensiedlungen auf den Ortsplaenen vom Jahr 1727*, in *Jb*, iii, p. 286.) When the numbering of houses was introduced in 1771, Jewish houses in the whole of Bohemia received Roman numerals to distinguish them from Christian houses signed with Arabic numerals. The number of houses with Roman numerals was not very slight.

² BD, 766.

³ BD, 1041.

⁴ See *Zion*, 1947, p. 51ff.

⁵ "In addition we grant the Jews the special grace and freedom that, in order to further their own benefit and a prompter payment of the yearly contribution (40,000 Fl.) mentioned above, they be fully entitled and empowered to trade in all their merchandise and things, to buy and to sell at all and sundry public yearly and weekly fairs like other Christian merchants." The Privilege is published by H. FRIEDLAENDER, *Materialien zur Geschichte der Juden in Boehmen*, Brünn, 1888, p. 134.

⁶ *Landesordnung* ad Q 69, p. 31. The same king granted the Jews in Prague in 1648 a Privilege containing the most detailed regulations concerning the Jewish trade, which remained valid till the "Patent of Toleration." This

Bohemia of 1724 shows that similar conditions prevailed at the beginning of the eighteenth century also, since only five among 1,623 Jewish merchants are mentioned as trading in money as their main occupation.¹ There was no change as far as these conditions are concerned in the course of the eighteenth century, since in a decree of the Royal Court concerning Jews, of 1788, that is to say after the "Patent of Toleration," the trade in detail of Jews, not money lending, is mentioned as their main occupation.²

Let me now characterise briefly the general nature of the provisions contained in the "Judenschutz." It is interesting to observe that although the documents, following the fashion of the time, are composed in a solemn form, they avoid, probably not accidentally, the word "Schutz"³ and define the legal status of the Jews rather in negative than in positive terms. Apart from certain special regulations, the "Judenschutz" guarantees a *status quo* for Jewish families residing in determined places and in determined houses and paying a certain high tax; these Jews will not be expelled and they enjoy the right to trade in almost all kinds of goods. It is quite clear that at least the latter point corresponded to actual conditions, since the kinds of goods described in the census of Jewry of 1724 are identical with those recorded in the Privileges.

Privilege served often as a model for privileges granted to Jews by manorial lords (these will be described anon), which refer to "all the rights like those granted to Jews in Prague." The Prague Privilege declares: "... in order that they (the Jews) may get their sustenance by plying their customary trade, buying and selling all kinds of haberdashery on weight, in measure, and ells ... as well as metals ... and keeping open shops and stalls in squares and markets as far as is customary; to attend yearly and weekly open fairs like other Christian merchants; equally to trade in raw and prepared leather and hides; equally in wool, corn, cattle, meat, wine, cloth, and fish; and to lend money on pawns at an interest not exceeding 6%." The Privilege is published by FRIEDLAENDER, p. 4. The provisions of this Privilege concerning Jewish craftsmen were dealt with by JAKOBOWITZ, *Die jüdischen Zünfte in Jb*, viii, and by RACHMUTH, *ibid.*, iii, who writes on p. 194: "At the outbreak of the Thirty Years' War the lending of money ceased, and the Jews turned entirely to commerce."

¹ See the table of Jewish occupations published in *Zion*, 1944, p. 17.

² *Vollstaedige Sammlung aller seit dem Regierungsantritt Josef II ergangenen Gesetze und Verordnungen*, Vienna, 1788 (henceforth: *Sammlung*), i, 400. See also *ibid.*, iv, 60: "If trade in detail were prohibited to Jews, they would perish."

³ The expression "Schutz" (protectio) is little stressed, or does not appear at all, in Bohemian privileges. In the Privileges granted by Frederik II in 1236 to Jews in Vienna the expression "protection" is well stressed at the beginning: "Per presentes scriptum nostrum fieri volumus universis, quos Nos Judeos Wiennae, servos Camere nostre, sub nostra et imperiali protectione recipimus et favore" (ed. STOBBE, 295). The same happens in the *Sachsenspiegel* (see KISCH, p. 180). Otakar mentions in his second Privilege "cautela eorum statuta et privilegia," but only towards the end of the document. Charles IV mentions, as stated above, p. 161, n. 1, neither "protectio" nor "cautela." Ladislav, too, promises in 1454 at the end of his Privilege "ohrad svobod i prav" (protection and rights), and Ferdinand declares in 1527 that his forbears "stretched out a protecting hand" over the Jews. Ferdinand II states in 1625 that the Jews "should be protected in all respect," and promises again that he will "protect" them; the same thing does Ferdinand III. But the main stress in all these privileges was upon the promise not to expel Jews, for this was their permanent danger. Cf. STEINHERZ, *Sage und Geschichte in Jb*, ix.

"JUDENSCHUTZ" ASSURANCES GRANTED BY LOCAL AUTHORITY
(MANORIAL LORDS).

In view of the political conditions prevailing in Bohemia the Royal Privileges granted to Jews must be considered as not more than a general framework which, although it was very seldom openly broken, nevertheless did not everywhere obtain for Jews the promised protection. Royal Privilege had full validity only so far as the real power of the king extended in Bohemia in that period; this power was unlimited only in the Royal towns. But these towns enjoyed special privileges, obtained mostly in the course of the fifteenth and sixteenth centuries, of being "Judenrein" (free of Jews),¹ with the only exception of the capital city of Prague, in which the Jewish community had existed uninterruptedly since the tenth century—Prague, however, lies outside the subject of this study.² The privileges for Jewry issued by the central Royal authority have, therefore, as far as the Bohemian Provincial Jews are concerned, rather a normative character, except of course, for the exceedingly high Royal protection money which Bohemian Jewry had to pay.³ Vienna, however, could not decree whether or not the Jews should enjoy Royal protection in a determined place, that is to say, whether they should be allowed to live there or be expelled; such matters depended on the manorial Lords.⁴ While the centrally issued Royal Privileges were parsimonious in promises of protection, the local regulations concerning Jews contained even fewer general terms, but abound, on the other hand, in many concrete determinations. Thus, for example, the number of families and of houses is clearly established at a figure which is not permitted to be exceeded.⁵ This fixed number of families receive permits of residence and work; and if a family is added in excess

¹ With the exception of the town Mlada Boleslav, which had a Jewish community since the fifteenth century. Mlada Boleslav became a Royal town in 1595.

² The reason for this is that the immensely rich material concerning Prague and especially the Jewish census of 1729 lie still unexplored in the Prague Archives. See PROKES, *Der Antisemitismus der Behörden und das Prager Ghetto in Jb, i* (concerning the census of 1729, *Jb, v*); *Die Juden in Prag, Festschrift der Bneih Brith Lodge, 1927*.

³ I shall deal with this point in the course of the present study.

⁴ On the flight of Jews from town to country see M. RACHMUTH, *Die Abwanderung der Juden Böhmens aus den jüdischen Gemeinden im XVII und XVIII Jhrd.* (This paper has, as far as I know, not been published, and Professor STEINHERZ gave it to me to read in manuscript in Prague in 1938). I shall refer to this anon. Prince Schwarzenberg writes on April 23, 1628, to his bailiff in Frauenberg: "It is determined by the *Landesordnung* that no Jew be admitted into such localities in which he had not resided in 1618. Nevertheless, since it is not only an *usus* but *notorium* that everybody who desires so admits such people into his estate, I hope that in this case I shall encounter no difficulties." *Trebon Fond Hluboka, I A 5 A J 1a*.

⁵ In 1721, 24 Jewish pairs were admitted to Kassejowitz (*Jb, iii, 279*); eight to Auscha in 1649 (GOLD, *Juden und Judengemeinden Böhmens, 1932, p. 13*); nine pairs, and with a special grace two married sons, to Jicin in 1651 (GOLD, 202). As a matter of fact, the limitation of the numbers of Jews to be admitted existed already before 1726; but since then it became the law (*Familiantengesetz*). The clause of the Kassejowitz privilege is significant in this respect: "If the Jewish

of the fixed quota the ensuing punishment is total expulsion.¹ The permit for work specifies again farm products of Bohemia, haberdashery, etc.; the only variation in the regulations concerns corn and metals—in some localities Jews are allowed to trade in them and are prohibited from doing so in others. I should like finally to quote two examples of local Jewish regulations in order to substantiate the thesis of this paper that there was an essential connection between the fiscal and juridical aspects of the "Juden-schutz" on the one hand and the permits for work and trade on the other. The Jews in Neustadt are granted protection by the municipality, and against the payment of "sixty score Meissen the Jewish community is granted the right to engage freely in Jewish trade and commerce."² In 1644 Pardubice resolves that each Jewish family should pay 20 florins annually "from its Jewish trade."³

PERSONAL "JUDENSCHUTZ"

Apart from the collective Jewish protection charters there were in existence "regulations" granted to an individual person or a single family and not to the Jewry of a town or province as such. The archives contain three exact copies of such individual charters, namely (1) concerning Adam Kauder, in Frauenberg, 1697⁴; (2) concerning Isaac Abraham, in Bzy, 1699⁵; and (3) concerning Hillel Yarek, in Chudenitz, 1706.⁶

It is probably not due to chance that the personal charters of protection⁷ differ from those issued by the local and central authorities in two points: one concerns a formal matter and the other the contents of the charters. From the formal point of view it is characteristic that the individual charters promise explicitly

family has a grown-up son capable of taking their place, he must duly apply to me for permission and, if I find that his humble petition can be acceded to and my gracious permission granted to him, his surviving father or mother, together with his brothers and sisters, must leave." The *Familiantengesetz* and its parallels within Jewry itself requires, however, a special investigation.

¹ RACHMUTH, *op. cit.*, refers to a case of a Jew who was denounced by a coreligionist for having contracted a clandestine marriage and was punished with blows and expulsion. This happened, however, in 1731.

² GOLD, p. 460.

³ *Ibid.*, p. 466.

⁴ *Trebon Fond Hluboka*, I A 5 A J 1a (dated Frauenberg, May 6, 1697).

⁵ *Ibid.*, I 5 A J 1 (dated Wittingan, January 1, 1699).

⁶ Quoted by RACHMUTH, *op. cit.* (dated July 23, 1706).

⁷ The personal special charters referred to in this study are those granted by a local authority, that is, the manorial lord, and valid only within his territory. But, particularly during the sixteenth century, owing to the frequent universal expulsion decrees, the central authority, that is, the king or emperor, granted also special charters of protection to individuals in the shape of "lettres patent," the main purpose of which was to offer exemption from expulsion. See BD, 516, 526, 768, 929, 948, 1248, and HERBERT FISCHER, *Die Judenprivilegien des Goslauer Rats im XIV Jhr. in Zeits. d. Savignystiftung* lvi (1936). FISCHER pointed out that in the 12 "lettres" issued in Goslar during the fourteenth century on behalf of local Jews there is no mention at all of protection. These "lettres" are nothing else but tax-agreements. The protection clause, however, was inserted in Goslar in 15 other special charters, which are similar to those issued in Bohemia during the seventeenth century, and their validity was restricted to a fixed period of time, again like in Bohemia.

"Schutz" (protection).¹ From the point of view of contents it is remarkable that the protection is granted for a definite period of one or five years.² The local and central charters do not determine the period of validity and sometimes grant the permit of residence and the right to trade in perpetuity.³

As far as the economic provisions of individual charters are concerned, the latter coincide, however, almost exactly with the local and central charters, and express even more explicitly the right to trade as the main provision of the charter of protection. Thus, for example, we read: "Isaac Abraham will pay 30 Rheinisch florins annually as protection money for the right granted to him to engage in commerce and trade in the manorial lands of Bzy and Zimutitz."⁴ Again, Hillel Yarek is granted by the lords of Chudenitz "protection" by which "he is allowed to buy and sell all kinds of haberdashery and to ply his trade and engage in commerce according to the customs of the Jews."

* * *

It is characteristic that in the only instance from Bohemia during the period under discussion, known to me, which contains a statement of the principles governing the payment of taxes by Jews, the grant of protection is not mentioned at all—probably because it was rather ineffective. I refer to Ezekiel Landau's declaration (which fully conforms with the contents of a charter of protection, as it has been described above) that the permit of residence and the permit of work or trade are equivalent to the payment of taxes: "the tax we owe is because we dwell in their lands; it is like rent money for a dwelling, and it is proper that the payment of the tax should be *per capita*. But since we are granted by them also means of sustenance through the right to trade, it is proper that we should pay tax from the capital."⁵

(To be continued)

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Jerusalem.

1. "... that protection be granted to him in all lawful things" (charter on behalf of Kauder). 2. "That the lord will protect him in all lawful matters" (charter on behalf of Isaac Abraham). 3. "Hillel Yarek . . . was received under protection."

2. 1. The validity of the charter on behalf of Kauder was fixed for five years "in order that he may be able to consolidate his business; for which purpose he intends to go as far as Leipzig." 2. Isaac Abraham was entitled to stay untrampled in Bzy during 1699 (his charter was then valid for one year only); after that period both parties could denounce the contract by giving half-yearly notice. 3. The validity of Yarek's charter was fixed for one year.

³ See above, p. 161, n. 2.

⁴ *Trebon Fond Hluboka*, I 5 A J 1.

⁵ *Noda' Bihudah, Hoshen Mishpat*, ed. Warsaw, p. 17a:

המס דוא על שאנו שוכנים בארצותם וכמו מעות דירה והיה ראוי ליתן הכל לפי הנפשות אך אחרי שנותר לנו גם מחיה לעסיק במי"מ ראוי גם לתת לפי מדין. The tax for the permit of residence had to be paid by every Jew who benefited from it; the tax for the permit to trade had to be paid only by those who possessed capital, that is in practice, by those who were engaged in trading. On the different types of taxes paid by Jews, see I. HEILPERIN, *Taqanoth Medinath Mehrin, Jerusalem*, 1952, p. 37.

HAHAM DAVID NIETO AND DEISTIC TRENDS IN EIGHTEENTH-CENTURY JUDAISM

On Sabbath *Vayeshebh*, 5464 (November 20, 1703), Haham David Nieto (1654-1728), spiritual leader of the Spanish and Portuguese Synagogue in London, delivered a sermon in which he stated that Nature and God were one and the same thing. This sermon gave rise to some far-reaching misunderstandings, for, on the face of it, it appeared as a mere restatement of Baruch Spinoza's heretical pantheism. Nothing could have been further from Nieto's mind, who, throughout his prolific literary career, stood forth as the champion of traditional Judaism against all heresies and aberrations. Nieto's intention was innocent enough. It had become customary by his time to ascribe rain, vegetation and other natural phenomena to "Nature" rather than to God, and Nieto insisted that these phenomena and functions should more properly be ascribed to God, as was done by the authors of the Bible and Talmud, who, in fact, did not know the word "Nature" as used by modern writers. Moreover, since the functions ascribed by the Talmud to God and the functions ascribed by modern writers to "Nature" were identical, it would follow that God and "Nature" are one and the same.

To defend himself against the accusation of heresy, Nieto published in 1704 his *De La Divina Providencia*, in which he made it quite clear that by the term "Nature" in his equation he had in mind *natura naturans* and not *natura naturata*. And in 1705 Haham Zevi Ashkenazi, then of Altona, who was called in to arbitrate between Nieto and the heresy-hunting members of his congregation, ruled in favour of Nieto and testified to his complete Orthodoxy.

In *De La Divina Providencia*, Nieto tells us why he considered it so important to speak out against the use of the term "Nature" when what people really mean is God. In fact, he compares the use of that term to the Baal cult of ancient Israel. The great sin of that cult consisted of the people's ascribing to the idol the benefits which they received from God. So, too, ascribing things to Universal Nature means transferring the attributes of God to something which is not God. Only that the latter case is even worse than Baal worship. For in those days there was an Elijah who, on the strength of an undeniable and wonderful miracle, disabused the people of their mistake, made them prostrate themselves on the ground, and acknowledge that "the Lord He is God, the Lord He is God!" "But now, that for our great sins, we have neither prophets nor

miracles, who will extirpate this new and more pernicious Baal? Who will overthrow this idol?"¹

No modern spokesman of Judaism would make that much of an issue out of the popular use of the term "Nature." Nieto's polemic, however, is seen in its true light when viewed against the philosophical and theological background of his time. The early years of the eighteenth century find England in the throes of the Deist controversy. Lord Herbert of Cherbury is generally regarded as the spiritual father of Deism. In 1624 he had published his *De Veritate*, in which he maintains the complete competence of human reason to attain certainty with regard to fundamental religious truths. These latter he reduced to five propositions: (i) the existence of God; (ii) the duty of worshipping him; (iii) the importance of piety and virtue as the chief parts of this duty; (iv) the propriety of repentance; and (v) the existence of a future state of rewards and punishments.

By the time of Nieto's ministry in London, the application of these principles of "natural religion" had led a number of Deist writers to attack the structure and the very foundations of traditional Christianity. This impatience with the element of Tradition in religion had its repercussions in the ranks of Jewry—especially among the ex-Marranos, who, deeming Judaism to be identical with the Written Law, found it difficult or impossible to adjust themselves to the demands of Rabbinic Judaism. An important phase of Nieto's literary work, into which we cannot enter here, was concerned with "demonstrating and proving with logical arguments, strong evidences, and great proofs the truth of the Oral Law"² to just this type of quasi-Karaite Marrano.

There was, however, an even more fundamental aspect of Deism in which Nieto saw a lurking danger to the accepted and cherished beliefs of Judaism. In the Deists' view the universe stands to God in the relation which the instrument bears to its maker. God brought it into being and ordained its laws. But henceforth it was left to work itself out in obedience to the laws originally given, and any suggestion of a deviation from the established order is resented by the Deists. In effect this meant the positing of a metaphysical entity, called "Nature" between God and the world. David Nieto could, therefore, say: "The Deists believe that there is One God but that He does not engage in the affairs of the world." And his comment on this view was that it "was enormously

¹ *De La Divina Providencia*, London, 1704, p. 87f. For the most complete biography and bibliography of Nieto published to date, see ISRAEL SOLOMONS, *David Nieto and Some of his Contemporaries* (in *Transactions JHSE*, Vol. xii [1931], pp. 1-101).

² *Matteh Dan*, London, 1714, title-page. For a detailed discussion of this aspect of Nieto's work in the light of contemporary philosophical and theological trends, cf. the present writer's *The Theology of Haham David Nieto*.

heretical and detestable blasphemy ; because there was no such 'Nature' which governed, for this 'Nature,' which, they say, governed, was God working through His Providence."¹

Here, then, is the clue to Nieto's identification of God with Nature, an equation which becomes particularly important in upholding the belief in miracles. These are understood as a direct interference on the part of God in the events of the world. If there were a "Nature" interposed between God and the world, the possibility of such interference becomes, as the Deists claimed, remote. Moreover, just as he appears as a champion of Rabbinic Judaism against Christianity, Karaism, and the Sabbatian Cabbalah, so does Nieto stand out as an antagonist of Deism.

The history of Jewish thought in the generations after Nieto shows us that the relation between Judaism and Deism was not always thought of in such antagonistic terms. We only have to think of Moses Mendelssohn, who was born one year after Nieto's death, and of some of the early Reformers.² What comes as a greater surprise, however, is the fact that David Nieto himself incorporated in his theology certain elements of ill-concealed Deist parentage.

In proving the existence of God, Nieto avails himself of the teleological and cosmological proofs of the schoolmen. But he also has this to say on the subject :

"Behold, even the men of the East Indies who are pagans agree and say that there is a God, the Creator of heaven and earth, Who has no beginning, and that it was He Who created the minor deities who are appointed over mankind and who are His servants and under His sovereignty. The inhabitants of the Kingdom of China say the same. But there is no one in the world, laying claim to human intelligence, who does not believe that there is a God, the Creator of heaven and earth, Who is One and infinite in His omnipotence."³

Again, speaking of the belief in Retribution, Nieto says :

"I call heaven and earth to witness that I have investigated and studied all the religions and cults of the world ; and I have found that not only the Christians and Moslems—who believe in our three dogmas of the Existence of God, Divine Revelation, and Retribution (though they disagree with us in their interpretation)—but even the majority of the inhabitants of the East Indies, and the majority of the inhabitants of the West Indies, as well as the majority of the inhabitants of Africa, who are black and barbarians, worshipping the sun and the moon and

¹ *De La Divina Providencia*, p. 9.

² Cf., for example, the "Creed" in the Charleston, S.C. Reform prayer-book of 1830, reprinted in DAVID PHILIPSON, *The Reform Movement in Judaism* (1907), p. 464f.

³ *'Esh Dath*, London, 1715, Part I, par. 62.

all the hosts of heaven, and cattle and the beasts of the field, and serpents and sea-monsters, and creeping things, and all the work of the hands of man in wood and in stone—they all believe and proclaim that the righteous will be rewarded after death, whereas the wicked will be chastised and punished with severe sufferings through countless ages.”¹

We are dealing here with two variations on the theme of “The Proof from Universal Consent” (*de consensu gentium*). This is somewhat of an innovation in Jewish theological literature. Though favoured by the Stoics, adopted by the Church Fathers, and used by the Mohammedans, the Jewish thinkers did not, as a rule, avail themselves of this argument.² The argument is, of course, adumbrated in the Bible itself, and echoes of it are heard in medieval Jewish literature.³ But not much weight could be attached to it, for, if the great majority of mankind’s religious expressions be taken into consideration, the argument “From Universal Consent” could just as easily be used in support of a plurality of gods. Thus, even the few Jewish writers who avail themselves of this argument never place their reliance upon it alone, but couple it with other proofs which establish the *Unity* of God; while, generally speaking, the “argument from *tradition*” was, as Wolfson said, the Jewish equivalent of the classical “argument from universal consent.”

But if Nieto’s use of the argument *de consensu gentium* can hardly be explained on the basis of his readings in Jewish theology, no such difficulty confronts us when we connect it with contemporary Deist thinking. It was basic to the outlook of the eighteenth-century Deists in England that what they called “natural religion” be of *universal* applicability—in contradistinction to the “elect” groups which laid claim to “revelations.” Thus they laid considerable stress upon what they believed to be the common residuum discoverable in all non-Christian faiths. But in order to discover this residuum it became a matter of utmost importance to find out as much as possible about as many different religions as were available for such an investigation. With the expanding activities of the British trading companies in the East and the West Indies at the end of the seventeenth and the beginning of the eighteenth century facilities for this study of Comparative Religion were not lacking. Nieto is probably not exaggerating too much when he claims that he has “investigated and studied all the religions and cults of the world.”

¹ *Esh Dath*, Part I, par. 94.

² Cf. KOHLER, *Jewish Theology*, p. 69, and WOLFSON, *Notes on Proofs of the Existence of God in Jewish Philosophy* (HUCA, Vol. i), p. 576.

³ Cf. *Malachi* i, 11; B. HALPER, *A Volume of the Book of Precepts by Hefes b. Yashiah*, pp. 32 and 36; and stanza viii of GABRIOL’S *Kether Malkhuth*. I am indebted to Dr. SAMUEL S. COHEN for drawing my attention to these references, which compel us to modify the somewhat categorical statements of KOHLER and WOLFSON.

Furthermore, Nieto's reference to the Kingdom of China may be regarded as decisive evidence of his indebtedness to the Deists. In contrasting their "natural religion" with Christianity, the Deists were in the habit of using the Chinese as their particular "pets."¹ They were the non-Christian people *par excellence*, whose religious heritage was completely free of any contamination from Jewish or Christian "revelations." It should also be noted that the two beliefs for which Nieto uses the argument *de consensu gentium*, Existence of God and Retribution, exactly coincide with two of Lord Herbert of Cherbury's five propositions of "natural religion," which we have enumerated above.

There are three ways in which we can account for Nieto's foray into the Deist arsenal, and they do not necessarily exclude one another. In the first place there is ample evidence in the literature of apologetics and polemics to the effect that no polemical writer ever escapes completely the influence emanating from the doctrines he combats. Thus we find, for example, that Yomtobh Lipmann-Muehlhausen, in his *Niṣaḥon* against Christianity, is led to make some statements more in line with the thinking of St. Paul than of traditional Judaism.

Secondly, we have to remember that if the medieval Jewish authors were suspicious of the argument from universal consent in view of its applicability to a plurality of gods, no such fear could animate Nieto. The Deists used this argument not to establish polytheism or trinitarianism but monotheism alone.

Finally, there is the personality and open-mindedness of Nieto himself. In a different context² he quotes approvingly the words of the Talmud (*Hagigah* 15b): "Rabbi Meir found a pomegranate; he ate the inside and threw away the peel." The Talmud uses this metaphor to account for R. Meir's continued association with Elisha b. 'Abuyah, even after the latter's apostasy. Similarly, Nieto, as he makes it abundantly clear in the fourth part of his *Matteh Dan*, insisted upon utilising whatever help philosophy and science had to offer in support of Jewish teachings and beliefs. As an eclectic he could fight Deism on one front and join with the Deists in fighting on another. That he did so is further proof of the fact that Nieto, though a champion of Tradition, was very much at home in the philosophical and scientific world of his time—a quality which only enhanced his effectiveness as a spokesman for Judaism at a critical time in its modern history.

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¹ Cf. A. C. BOUQUET, *Comparative Religion*, Penguin Books, 1941, p. 19.

² *Matteh Dan*, Part IV, par. 136.

HEBREW FRAGMENTS IN THE MINGANA COLLECTION

To the memory of Professor Eugen Mittwoch

The Mingana Collection of manuscripts in various Semitic languages, housed in the Central Library of the Selly Oak College in Birmingham, owes its fame mainly to its wealth of Syriac manuscripts. This is hardly surprising, since the late Dr. Alphonse Mingana, who collected these manuscripts in the East, was above all a Syriac scholar. It is, perhaps, not so widely known that this Library contains also about forty fragments of Hebrew manuscripts, most of which come from the Cairo Geniza.

The first lot of nineteen fragments belongs to the original Mingana Collection and seems to have been acquired by Mingana himself. As he was not interested in this kind of manuscripts, he may have bought them on some particular occasion without any wish of building up a proper Hebrew collection. The remaining twenty-two fragments were acquired after Mingana's death, together with the books of the late Professor Eugen Mittwoch. Mittwoch had bought in 1899 forty Geniza fragments¹ and had begun to publish some of them.² It is to the memory of this great Semitic scholar, who did not live to announce the contents of his collection that this article is dedicated.

In the spring of 1953 I had the good fortune to spend a couple of days in the Selly Oak Colleges' Library in order to collect material from Syriac manuscripts. On this occasion, just as I was about to leave, I was able to spend a few hours on the Hebrew collection and to take a few notes. I am publishing them here only because this collection has remained practically unknown, and in the hope that this short list may serve its purpose by drawing the attention of scholars to this collection. They will be able, when they examine the collection, to complete and correct the description offered here.

MINGANA COLLECTION

1. Two parchment leaves, text arranged in two cols. Halacha. Square letters. About the fourteenth century.
2. A torn parchment leaf. Halacha. Square letters. About the twelfth century.

¹ See *ZDMG* lvii, 61ff.

² See *op. cit.* and *ZAW* xxiii, 87ff.

³ Some of the fragments have been identified, as can be seen from the attached labels. However, I cannot give credit to whom credit is due, since the Librarian—to whom special thanks for her helpfulness are due—did not know of anyone who had been working on them. An obvious explanation would be that the fragments were identified by Professor Mittwoch himself. His handwriting, however, seems to have been different, as I learned from specimens of his writing kindly given me by Mrs. Mittwoch.

3. Ten leaves, containing a fragment from a detailed, homiletic commentary on Proverbs. Cursive script. About the fourteenth century. The fragment is bound together with two leaves containing a philosophical-exegetical commentary on Num. xx, 7 sqq., in which Nachmanides is mentioned. About the fifteenth century.
4. Two partly torn leaves, containing I Chron. ii, 24-iv, 6. Square script. About the thirteenth century.
5. Twelve leaves containing parts of poems by Nadjara and others, as well as an index to some *Piyyuṭim*. Square and cursive script. Modern Ashkenazi hand.
6. Three single leaves containing part of Maimonides' *Hilkhoth Gezela wa'Abheda*. The first leaf contains the halacha כל הנוגב (Chapter I) and the third leaf כל נגב שיש לו דמים אם נפל עליו גל בשבת מפקחו עליו (Chapter IX). Sefardi script. About the fifteenth century.
7. Sixteen leaves of a commentary on the end of Lev. and the beginning of Num., mentioning Nachmanides and Gersonides. Cursive script. About the fifteenth century.
8. Two torn parchment leaves, containing Jos. xxii, 5-11; xxiii, 15-xxiv, 5, with vowels and accents. Square script. About the twelfth century.
9. Two parchment strips, containing 2 Reg. ix, 1-4, 6-9, 27-30, 32-38, with massoretic notes. Square script. About the twelfth century.
10. Remnants of twenty small darkened leaves containing tales in colloquial Arabic. Cursive, negligent script. About the eighteenth century.
11. Three small-sized leaves from the writing of Rabbi Jacob b. Sur. Records of his activity as law-court scribe in 5478 (1718), 5501-5502 (1741-1742). The fourth leaf contains arrangements of letters for an amulet. Oriental script.
12. Five leaves containing *midrashic* stories. Cursive script. About the fifteenth century.
13. Eight leaves, containing the Morning Prayer. It begins with the Song of the Sea and ends with the words אתה נבור לעולם ה' of the 'Amida. Oriental (Persian?) rite. Fairly late hand.
14. Two leaves (much damaged), containing an alphabetical list of pharmaceutical plants in Arabic. Small cursive script. About the fourteenth century.
15. Four leaves (much damaged) from different manuscripts written in negligent cursive hands: Two leaves contain a letter in Persian; one leaf, a fragment of a *Ketubha*, and another, a commentary on Gen. xlv. About the fifteenth century.
16. Fragments (much damaged) in Hebrew and Arabic: One leaf contains a Hebrew commentary on Num. xvi. Two leaves, the

- accounts of a merchant in Arabic. Three leaves, jottings of names.
17. Fourteen leaves (now stuck on paper), containing fragments of a medical book in Arabic. Written in a cursive hand. About the fourteenth century. A few lines dealing with a grammatical question from an early print are stuck on one of the pages. Another fragment derives from an ethical treatise dealing with love and lust.
 18. Eight fragments (stuck on paper) from different manuscripts, partly in Arabic writing; mostly illegible. One fragment deals with Halacha and another contains parts of the prayer *נשמת כל חי* (eleventh or twelfth century).

MITTWOCH COLLECTION

1. A torn leaf, containing Alfassi, *Shabbath* 75b. Cursive script. About the fifteenth century.
2. Two small leaves containing a *Piyyut*, commencing *כי ילדתיני איש ריב*. Negligent square script. About the fifteenth century.
3. Four torn leaves of a *Piyyut*, commencing *מפדי על זאת עניה ויבדל*. Cursive script. About the fourteenth century.
4. Two leaves from Maimonides' *Hilkhoth 'Erubhin* iv, 24-v, 3; vi, 4-10. Neat cursive script. About the fifteenth century.
5. Two leaves, one dealing with the law of paying the *Ketubha* of a widow. Square script. About the fourteenth century. The other—of halachic contents, too—is written in Arabic and deals with sacrifices outside the central sanctuary during the period of the prophets.
6. A leaf in Hebrew and Arabic, dealing with *Hilkhoth 'Isurey Bi'a*. Square script. About the fourteenth century.
7. Two torn and partly burned leaves, containing the commentary of Maimonides on the Mishna *Shabbath*, end of chapter xxi and beginning of chapter xxii. Cursive script. About the fifteenth century.
8. Two torn leaves, one containing Alfassi, *Hullin*, chapter i. Large cursive script. About the fourteenth century. The second leaf—different in script and size—seems also to deal with *Hullin* (חוט השדרה אי נפסק ברובו).
9. Two small leaves of *Piyyut*, begins: *חיי נשמה כי לבשה לנו גיל*: הארמה, לא אקחה כוסי כי אם מלאה כי בא צרי גלעד. Cursive script. About the fourteenth century.
10. Two small leaves of *Piyyut*. The first leaf, written in a large, negligent, cursive script (about the fourteenth century), begins: *למענך אלהי עשה ולא למעננו, שאנחנו החומר ואתה יוצרנו, ואתה הרועה ואנחנו הצאן*. The other leaf, written in smaller script,

begins : אתה הוא מלך מלכי המלכים, אתה הוא מוחץ ורופא ואין לנו עזר מבלעדריך אלא אתה.

11. Three small leaves (wrongly bound) ; thirteenth century cursive script. They contain the 'Amida for the feast of Pentecost. The original rhythm of the prayer has not yet been spoiled by later eulogistic additions ; for example : וקרבתנו וקדשתנו במצותיך וקרבתנו . . . These leaves are bound together with a leaf, containing the Targum on Ex. xix, 1-3, 7-9.
12. Two small leaves (partly torn), containing *Seliḥoth*. The first leaf begins : ויעזר לענות קוראיו בצרה ויחלנו תנחומיך ובזאת . . . נתנחם . . . אבינו כי חטאנו : יה בשפכי נדך . . . Cursive script. About the fourteenth century.
13. Two small leaves, containing part of the commentary of Rabenu Hananel on *Baba Meṣi'a*, fol. 2. Cursive script. About the fifteenth century.
14. Two leaves (much damaged), containing part of a *Piyyut*. On one leaf the beginning can be read : שת צור : להסיע בנועם . . . Square script. About the fourteenth century.
15. A torn parchment leaf, containing a *Hosha'na'-Piyyut* : למען אב ובניו באו ארבעה בתיבה להיחבא . . . Square script. About the twelfth century.
16. Two leaves from a *Mahzor*, written in a fifteenth-century cursive script. The first leaf contains the additions עננו ורחם for *Tish'a Be'abh*. Because of the numerous variants of the text it may be useful to reproduce some sentences here : עננו אבינו¹ ביום צום התענית² כי בצרה גדולה אנחנו, היה נא קרוב לשועתנו מרם נקרא ואתה תענה, נדבר ואתה תשמע³ כאמור וכו'. The text of רחם ה' אלהינו על העיר האבלה השוממה החריבה : הנתונה ביד זרים הרמוסה בכף כל עריצים ויבלעוה לניונים וירשוה עובדי פסילים⁴. נערה ה' אלהינו מעפרה והקיצה מארץ שביה. נטה אליה שובת שלומך כנחר שלום וכנחר שלל גוים כי אתה וכו'. בא"י מנחם עמו ישראל ובונה ירושלים.

While this text does not represent the usual Sefardi type, the 'Amida for Rosh Hashana—written on the verso—bears

¹ The final blessing : בא"י מקדש ישראל חוג השבועות ומועדי שמחה והומנים ומקראי קודש is identical with that of the Palestinian Geniza-fragment, T-S H 4 (1); cf. ELLBOGEN, *MGWJ* lv, 440. Cf. *ib.* pp. 435, 444, 445, 587 and especially ELLBOGEN's remarks on p. 590. Cf. also the fragment published by ASSAF, *Sefer Dinaburg* (1948), p. 126. The orthography of קראתה should also be noted.

² So in the Calabrian rite. Cf. MS. Bodl. Reggio 63. Cf. also FINKELSTEIN, *JQR* xvi, 10.

³ The reading of Sa'adya, Maimonides, and the Tur is : ביום צום העניתנו

⁴ This is the version of Maimonides in MS. Bodl. Hunt 80, which was corrected by the author himself. On the problem of the rites represented in the Geniza-fragments cf. MANN, *HUCA* ii, 269ff.

⁵ Up to this point the version is similar to that of Sa'adya. The rest is somewhat similar to the rite of *Mahzor Romi* (1485).

resemblance to the Sefardi usage, although it is not identical with it. Thus, for example : זכרנו לחיים אל מלך הפץ בהיים
 וכתבנו בספר חיים טובים למענך אלהים חיים אל ו חי ו ומנן.

The second leaf contains the repetition of the *Mussaf*-*'Amida*, beginning with the middle of *'Alenu*.²

17. A large parchment leaf, containing a *Piyyut* for *Yom Kippur*. It begins : כי אל רחום ה' אלהיך לא ירפך וכי : צפה בבת תמותה ציוס : ה[עשורן]. Then follows the *Piyyut* נחשב כצנ באיתון . Square script. About the fourteenth century.
18. Two leaves, containing *Selihoth* in a negligent square script of the fifteenth century. The beginning reads : סלח נא ונעמוד ו . עוונות אם תשמוח אן בנו כח לעמד . The other leaf starts with : אבוא בנברות א יר ו ברוב תפלה ותהננים להמדיר .
19. Two leaves (much damaged) from a philosophical treatise. On the first leaf one can read : פ"ק ראשון : ענין המציאות הנאמר : על כל נמצא מן הנמצאים נחלקו בו הפי' וסופים . The other leaf contains the heading : מה שראוי שיאמצהו כל : פרק ששי : מה שראוי שיאמצהו כל : בעל Cursive script. About the fifteenth century.
20. Two small parchment leaves (much damaged), containing *Selihoth*. They begin : תקשיב בהתחללו . רצונו ו תפס לפי משאל . מלו . Another *Piyyut* (for *Ne'ila*) starts : שעה ו שועת ו מבקשיך ו : בעמדם ו בנעילה . Square script. About the fourteenth century.
21. Two narrow, oblong leaves (much damaged), containing an *'Azharā* for the feast of Pentecost : עלה משה לראש הר סיני לקבל : ברצון אמרי חיים . Cursive script. About the fourteenth century.
22. Twelve small leaves, containing Rashi's commentary on Gen. xlviii, 7-xlix, 27. Cursive script. About the fifteenth century.

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¹ The last word I found only in the Catalanian rite.

² Also here a Sefardi text. For the reading ם העי cf. MS. Bodl. Hebr. e 41, fol. 112b and ELLBOGEN, *loc. cit.*

1. BEN SIRA, XXXIII, 4

In *The Journal of Jewish Studies*, Vol. III, pp. 84-5, Dr. Reider attempts to explain away the difficulties in הכן דברריך ואחר תעשה (J. b. Sir. xxxiii, 4; Marcus) by altering תעשה to תשתע and תניה to תנוה and translating the resultant text "prepare thy words, and then converse; and a house for rest, and then repose." Neither suggestion can be accepted; for תשתע requires excessive alteration of the text and imports a juss. form which is in itself unwanted and vitiates the parallelism with the corresponding indic. form; and תנוה is not only a violent alteration of the text but also involves a bare tautology. A mere transposition of letters in תעשה yields תשעה from a Hebrew שעה = Syr. *sh'â* "charmed," whence *she'yâ* "sport" and *shô'ithâ* "talk" are derived¹; and in Jud.-Aram. אשתעי "talked together" supports the suggestion. Then תניה comes from the Hebrew ננה "struck² (with light), shone,"³ which is the same verb as the Jud.-Aram. ננה "was dark" and the Syr. *ngah* Pe. "shone," Aph. "made to shine; passed the whole night"; and so the root NGH properly refers to the time just before dawn,⁴ when it is neither dark nor light or when darkness is being lit up by the first rays of dawn as they strike the hill-tops. The sense then means simply "prepare thy words, and then chatter; and (prepare) a resting-place, and then sleep on till dawn." So, although the Vss. throw no light on the passage, sense is won by merely transposing two letters and referring a verb to the right root.

2. JEREMIAH, XII, 6

Long ago Schultens and Hitzig cited the Arab *tamalla'a* "was massed, assembled" and *tamâla'a* "helped one another" to explain the Hebrew התמלא "was gathered together" (Jb. xvi, 10). In *The Journal of Jewish Studies*, Vol. III, pp. 47-52, Professor Thomas, following up the hint thus afforded, explains קראו מלאו "proclaim ye: 'Fill (the ranks)!'" as meaning "proclaim mobilisation" (Jer. iv, 5), rightly detecting a military metaphor. I further suggest that a similar usage may be recognised in קראו מלא "They cry after thee 'All together!'" or "Help!"

¹ Cp. Mand. אשתעי "talked together."

² Cp. ננה "buted," ננה "struck, touched (strings of musical instrument)," ננה "struck, touched," ננה "smote," ננה "approached," all from the same base.

³ Cp. *magno percussit lumine campos* (SILIUS ITALICUS, *Poenica* iv, 329).

⁴ Hence Aram. *nôghâ* "Venus" and Syr. *nûghâ* "Lucifer," as well as Hebrew ננה "light of dawn" (cp. Is. lviii, 3 with lxii, 2).

help!" (Jer. xii, 6)¹; for the Arab. *mala'u(n)* "full number massed body" is so used adverbially in the accus. *mala'an* beside the verbal accus. *tamalla'atan* "in a mass" as a cry for help meaning something like "all together!" or "help, everyone!" (Lane); and there is no reason why the Hebrew מלא *plenam* may not have developed the same sense. The verse may then be translated:

"For even thy brethren and thy father's house have betrayed thee; even they have called after thee 'Help, everyone!' Trust them not, though they speak thee fair."

Thus the solution of one problem carries the solution of others with it.

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¹ Cp. lxx's *episunchthesan*; the Vulg.'s *plena voce* makes no sense.

NOTES AND COMMUNICATIONS

1. THE WORD קָן IN SAADYAH'S SEPHER HA-GALUY

In their recent studies of the word קָן as meaning "period" or "time" both M. Wallenstein¹ and N. Wieder² appear to have overlooked the phrase קָן ראשון which occurs in Saadyah's *Sepher ha-Galuy*. Nor has the phrase been adduced, so far as I know, by other scholars, whether lexicographers or students of the Qumrân Scrolls. When speaking of the collection of the Oral Laws which became the Talmud, Saadyah says the following: ויקבצום בהמה ותלמוד קראום לשנים חמש מאות מן הקן הראשון.³

Now, if the phrase קָן הראשון refers to the time of the destruction of the Second Temple, as S. Eppenstein implicitly assumes⁴—and it is difficult to see what else it could mean—the phrase would have an important bearing on קָן אחרון as used in the *Habakkuk Commentary*.⁵ It is indeed scarcely possible to assign a definite meaning to the phrase קָן הראשון as used by Saadyah, if we dissociate it from the notion of קָן אחרון as meaning the epoch preceding, or at least the "time" appointed for, the consummation of Jewish Messianic hopes. From this it would not necessarily follow that the *Habakkuk Commentary* was composed *after* the destruction of the Second Temple; for the portents of the "last epoch" were only too painfully evident long before that event and the sectarians of the Qumrân Scrolls may well have had their own *terminus a quo* for the "epoch." It remains true that the yearnings for the Messiah were older than the destruction of the Temple, even if one disregards the equation קָן = "epoch" and substitutes קָן = appointed time.

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¹ *Vetus Testamentum*, Vol. IV, No. 2, 1954, p. 211ff.

² *Journal of Jewish Studies*, Vol. V, No. 1, 1954, p. 22ff.

³ *Jewish Quarterly Review*, Vol. XIV (1901), p. 45, lines 13-15, and comp. facsimile facing p. 45. The expression בוקם as = בומם occurs also in Saadyah's *Sepher ha-Mo'adim*, see *ibid.*, p. 47, line 11. BORNSTEIN rightly saw that the word meant there בומם הקצור, see *Sepher ha-Yobhel* in honour of N. SOKOLOV, Warsaw, 1904, p. 73, n. 1.

⁴ *Beiträge zur Geschichte und Literatur im Geonäischen Zeitalter*, Berlin, 1913, p. 129, n. 4, where EPPENSTEIN deduces that, according to Saadyah, the collection of the Oral Law was completed ca. 568-578 A.D.

⁵ vii, 7, 12; I omit ii, 7, and vii, 2, as well as Dam. Frag. 1, 12, where *dor* is used, though WIEDER is inclined to treat *dor 'aharon* as parallel to *qes 'aharon*, see *op. cit.*, p. 27 and n. 5.

2. ABŪ NADDĀRA

In his remarks in *The Journal of Jewish Studies*, IV, 2, 1953, 90-91, on my essay, *Abū Naddāra* (*ibid.*, III, 1, 30-44), Dr. Rochlin cites a quotation from Blunt's *Diaries* of 1898, regarding Sanua's connections with the Marchand mission. This piece of information

was not unknown to me, as I had used material from Blunt's *mémoires* extensively for my monograph (cf. my mention of his *Diaries*, in *JJS*, *ibid.*, p. 42, note 6). Marchand's plans for an alliance with the Mahdists against the British were far-fetched—even if he ever entertained such hopes seriously, a point on which I have so far found no proof. To suppose that the Muslim fanatics of the Sudan would join hands with the Christian unbeliever was symptomatic of Marchand's ignorance of the situation. The fact that Sanua was acquainted with the matter, *after* the Mission's failure to contact the Mahdists, is no proof that Marchand had confided in him. Indeed, one may doubt if, in connection with secret affairs of state of this kind, the French officer would have taken into his confidence a Jewish journalist. One cannot but wonder if this story of Sanua's, as related by Blunt, is not a figment of his own Anglophobe imagination or a tale invented for the purpose of boosting his own self-importance.¹

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¹ In addition to F. KERN, *Neuere ägyptische Humoristen und Satiriker*, in *M.S.O.S.*, 1906, part 2, 44, I would now like to supplement the bibliography in the footnotes of my essay by the following material preserved in the Archives of the Italian Foreign Office in Rome: *Archivio Storico, Affari Esteri Roma*, Serie Politica, vol. 1299 (Egitto), Giuseppe de Martino's despatch No. 62, to Cairoli, dated Cairo, May 4, 1880, and Encl. De Martino's despatch No. 697, to Cairoli, dated May 31, 1880. For Sanua's family(?), see *ibid.*, *Archivi Cons. d l Cairo*, vol. 868 (Egitto), L. Vignale's letter to Visconti Venosta, No. 31 bis, dated March 30, 1867.

CURRENT LITERATURE

5. FUNDAMINSKY, *A New Hebrew Grammar: Complete Course for Teachers and Students, with Vocabularies and Exercises*. 361 pp. Jewish Publication Committee, London, 1954. Price 22s. 6d.

Dr. Fundaminsky, lecturer at the Faculty for Training of Teachers of Jews' College and Education Officer of the London Board for Jewish Religious Education, has made good use of his long experience in teaching the Hebrew language to advanced students. The book presents the grammar of Biblical Hebrew pretty comprehensively and yet at the same time in a manner which is not technical. Frequently its explanations are a great improvement, in clarity and neatness of formulation, upon those found in other grammars. The basic phonetic rules, which are fully and succinctly treated at the outset, are kept before the eye of the student all the time, thus helping him to make sense of what might otherwise be—and for many learners are—unintelligible vagaries and irregularities.

The author has introduced one happy innovation: he points out, rightly, that the vowel preceding the so-called *sheva medium* is structurally a *sheva mobile* or *hateph*, and is thus a "slight vowel," not a full short vowel. I would submit that Dr. F. may also be right as far as the actual sound of such vowels in the Tiberian system of pronunciation is concerned.

The exercises and vocabularies, in what is evidently a grammar for the more advanced student, seem rather unnecessary. An index would have been more important, especially as points of syntax are often discussed in rather unexpected places (there are no separate chapters devoted to syntax). The

author could also have saved himself the references to Modern Hebrew, which are sketchy in the extreme and sometimes wrong. But these are faults of construction which do not affect the basic value of the book as an instrument for learning Biblical Hebrew grammar.

The earlier chapters offer transliterations of words into both the "Ashkenazzi" and the "Sepharaddi" pronunciation. The latter, the author informs us, is not that of the Israeli speakers, but of the "Spanish and Portuguese Jews." What is actually offered under this heading is, of course, the usual historicising scientific transliteration, with only *v* for *w*, and *ç* for *š*. It is also hardly right that "the Sepharaddi pronunciation is more in conformity with that of other kindred languages, especially Arabic," since its two characteristic features, *a* for *qameš* and *o* for *holam*, correspond in that language to short *a* and long *a* (or *au*) respectively. The reason for thinking the "Sepharaddi" pronunciation older is, of course, its similarity to the manner in which these two sounds are represented in Assyrian and Greek transliterations.

In view of the interest of the author in phonetic explanations, it is a pity that he does not take any account of modern phonetics. He offers such choice descriptions as that of *teth* as "a dull and banging sound, produced by pressing the tip of the tongue against the back of the teeth" (*i.e.*, an ordinary *t*!), sounds which are "slightly rattled" (*cayin* and *qoph*), or *šade* pronounced like "French *ç* (=a hissing *s*)." As is well known, French *ç* is the same as French *s*. Under *lamed*, he actually teaches us to pronounce it the way Russian Jews do, hard and *u*-like with back vowels and *ly* with front vowels. He does not even mention (p. 14) that the *sheva mobile* is generally

assumed to have been sounded as a short neutral vowel and is still so sounded by Sephardic and Oriental Jews.

Remarks: (P. 8) It is not "highly disputable" that before the pointing was evolved vowels were indicated by אָהָי; it is a fact, as proved by the Dead Sea Scrolls. (P. 9) The very first beginnings of the Massora lie in the sixth century C.E. (Kahle in Bauer-Leander's grammar, p. 82), but our Tiberian system was certainly not completed "shortly after the closing of the Talmud." (P.10) The form in which the names of the vowels are given is due to Mr. Z. Vardy; it ought at least to have been pointed out that that the traditional names are somewhat different. Though F. writes here "Seggel" for *è*, he speaks afterwards of "Seggolates." It is also rather misleading to say that the *tenuoth gedoloth* are simply long vowels; as far as we know the situation was much more complicated. (P. 11) It is not "a tendency" in the Israeli pronunciation to pronounce *qameš gadol* and *patah* alike: they are always pronounced in exactly the same way. Nor do "the modern Sepharaddim in Israel adapt themselves more and more to the Ashkenazzi pronunciation of *šere* as *é*," quite to the contrary: in the speech of most speakers of Ashkenazi origin the distinction between *šere* and *segol* has been given up, and the resulting sound, irrespective of the way it is written, is pronounced *è* everywhere, except in unstressed medial open syllables and sometimes in unstressed final closed syllables. (P. 25) "a letter must be doubled by Strong Dagesh . . ." (c) When it has a vowel and is preceded by a long accented vowel that stands in a closed syllable." This is a Circular Rule: it is only through the dagesh that we know the syllable is closed. (P. 31, line 1) For "actually" read "virtually." (P. 34) Delete *negbah*. (P. 35) "the accent is moved forward according to the length of the addition." Wrong rule: the

addition in *devar-èkha* is just as long as in *divr-ékhem*. This also disposes of the following "rule" about the alleged special treatment of suffixes beginning with *n*. (P. 50) It is a mere guess that "in pre-literary Hebrew" the definite article was **hal-*. The Arabic article is *l-*, not *al-*. The only bit of available evidence we have points to original **han-*, namely, the article of the Proto-Arabian inscriptions of the part of Arabia nearest to Canaan, which is usually *h-*, but before *aleph* is *hn-*. In any event, what is the point of such information in a grammar otherwise not historical? (P. 52) It is quite wrong, that names of rivers and mountains do not usually take the definite article. (P.53) For אֲרָבָא read אֲרָבָא (P. 55) True, *ribbuy* for "plural" is the form sanctioned by the *Va'ad Hallashon* (*Leshonenu* vii, part 4), but the student will find in his Rashi and elsewhere the form *rabbim*. (P. 57) For *béntayim* "meanwhile" (which in any case does not belong here) read *bénathayim*. (*Ib.*) The plural *shanoth* does not exist, only *shenoth* in the construct, just as there is *yamim* and *yemoth*, not mentioned by F. (P. 68) Under (e), add: but *heder* "a room" normally has the construct *hadar*. (P. 73) The rule that two constructs cannot depend on one genitive is often neglected in Medieval and Modern Hebrew. (P. 74) Rule (d) is too general; for the correct facts see Gesenius-Kautzsch par. 130e. In rule (d) it should be *asher le* not *shel*; the use of *shel* without proleptic suffixes is today increasingly being considered a colloquialism in Modern Hebrew. In (f) the Mishnaic plural of *béth-keneseth* is *batté kenésiyyoth*. (P. 76) In sentence 13, *calithi* means not "travelled" but "emigrated." (P. 79) Modern Hebrew *hakhi* for expressing the superlative is a crude colloquialism. *Hayyother gadol* is also more or less being discouraged; *haggadol beyother*, the best form, is not given. Par. 3(a) add: the masculine plural is formed in *-iyyim* if

the word is used as adjective, in *-im* if substantively. (P. 80) Under (f), note that *hakham beyother* does not mean "too wise" (except in negative clauses, where we have an idiomatic use of English "too"), one can also say (and increasingly writes) *hakham midday*, and the spoken form is *yother midday hakham*. (P. 84, last line) The form *āsār* does not exist independently, *esrim* is more likely to be an old plural of *eser*. (P. 85) Under (e) it would have been helpful to give some idea of the variety of constructions of numerals used in B.H. Besides, Modern Hebrew adheres to the rule approximately as strictly as B.H. (P.90) *Zu* is almost always a relative pronoun: it corresponds to the Arabic relative *dhū*. (P. 99) Under (o), delete *qah lekha sefer*, which is not Ethical Dative. The E.D. is, of course, not reflexive. (P. 102) The way in which the relative clause is explained is, to my mind, misleading. (P. 104) The sentence in line 3 should read *'ani yode'a meh asitha*. (P. 106) Some information on other interrogative particles would seem desirable. (P. 133) Under (b), oddities of Massoretic pointing are presented as a rule. (P. 142) In sentence 5, read *wi-yruqqim* (with *qubbus*) for the impossible form printed. (P. 159) Par. 3(b): the facts are more correctly stated on p. 174 (P. 160) "It is my desire" is not "commonly" expressed in B.H. by *yesh eth nafshi*. The construction occurs once, Gen. xxiii, 8; similar idioms, but without *eth*, occur II Kings ix, 15 and Jer. xv, 1. (Ib.) *ēšel* in the sense of French *chez* is quite modern. (P. 163) Ad (4): one misses the mention anywhere in the book of that characteristic and difficult construction, the circumstantial clause. (P. 166) Following learned practice, F. illustrates the verb by forms of *qaṭal* (though in later chapters he employs *shamar* for the same purpose), but he should at least not give the impression as if the various conjugations of this root really existed in Hebrew. In fact,

in the two passages in Job and the one in Ps. cxxxix, where the Qal occurs, it is no doubt an Aramaism; the Paytanim used also Nifal and Piṣel/Puṣal; Jewish Aramaic the Piṣel and the Ithpaṣal (Ippaṣal), the latter, of course, as a simple passive. (P.167) "Indicative" is not *yi'ud* (or rather *yē'ud*), but *hiwwuy* (*Va'ad Hallashon* terminology, *Leshonenu* vii, part 4). (Ib.) The treatment of the meanings of perfect and imperfect (the Hebrew names are not given) is very poor, and appears to be mere lip-service to modern scholarship, since immediately afterwards the tenses are given as "Perfect (Past)" and "Imperfect (Future)." (P. 171) *ya'aleh* in Gen. ii, 6, is a circumstantial clause. (P. 174) *toraf* in Gen. xxxvii, 33, is not Puṣal, but passive Qal (since there is no Piṣel found anywhere). (Ib.) *shimcu shamoa'* is not only continuative, see Gesenius-Kautzsch par. 113r. (P. 175) Ad 5: The absolute infinitives in Is. xxi, 5, are indeed taken as imperatives by the ancient versions and the Jewish commentators; modern comms. equate them with past or present tenses. (P. 178) The use of the participle for the present tense is strictly speaking not Biblical, and students should be discouraged by their grammar from so rendering it in B.H. (Ib.) The rule (e) applies, of course, only to Modern Hebrew, where it apparently originates from the influence of German or Yiddish. (P. 179) For *camud* read *ammud*, and delete, as it is not a participial form. *Panuy* means, of course, currently "free" in Mishn. Heb.; passive participles of intransitive verbs appear in all periods of the Hebrew language, though, of course, not with passive, but with static meaning, cf. Segal, Mishn. Heb. Gr. par. 336. (P. 185) Ad (3): it is very doubtful whether the rule for inversion after adverbs should also be applied to the participial present tense. The whole usage, in its regular application, is Modern rather than Mishnaic. (P. 192) *Patah* in the last syllable of the 3rd msc. perf. Piṣel is about

as common in B.H. as *šere*. (P. 199) *Hizzakku*, Is. i, 16, is the only B.H. case of Hithpa'el of a verb beginning with *z*, but probably it is really a Nipha'el of *zkk*, cf. Honeyman in *Vetus Test.* i, 64. The Mishnaic usage (*hizd-*) is supported by the cognate languages. (P. 219) The rule (f) is wrong, see the instances quoted Gesenius-Kautzsch par. 116i. (P. 219) Rule (10d) is wrong, cf., *op. cit.*, par. 117x. (P. 242) Under (s), for "generally" read "often." *Mesubbin*, as the singular *mésébbh* shows, is not "a contracted Pu'al form," but a participle Hif'il, with *i* changed to *u* under the influence of the following labial. (P. 251) In B.H. *'ahabbh* is also used for "to like"; the restriction given under (t) is Modern. (P. 265) Ad (d): Talmudic Hebrew does not treat ל"ה and *tertia* *aleph* verbs alike in the imperfect and imperative, where the old *tert. aleph* forms are preserved. (P. 286) *Efshar* means "it is possible," not "perhaps" (as in Yiddish); *muqdam* and *me'uḥar* are not adverbs; for *legamri* read *legamre*.

The grammar will be found most useful for acquiring a mastery of Biblical Hebrew morphology. As for syntax, F. states (p. xix) that "the best way to learn Hebrew syntax—or any other syntax—is to read selected texts with caution and intelligence." The present reviewer cannot agree with this point of view: on the contrary, proper guidance in syntax is important for the understanding of ancient texts in particular. But we possess no modern treatment of Hebrew syntax, and one certainly cannot expect the author of a practical book like this one to undertake the extensive research necessary for a satisfactory presentation. On the other hand, some chapters on the more common types of subordinate clause would have been of great help to the student, and prevented him from foundering, as is so common, upon relative and circumstantial phrases.

The book is well printed and generously laid out. Printing errors are few and not too disturbing.

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